Press Freedom
250 Years

Freedom of the Press and Public Access to Official Documents in Sweden and Finland – a living heritage from 1766
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Preface by the Speaker of the Swedish Parliament

This year marks 250 years since the Freedom of the Press Act of 1766 was adopted by the Swedish Parliament – the Riksdag. In the Riksdag, this historic event will be commemorated by a seminar and the publication of this anniversary book.

The Act on Freedom of the Press passed on 2 December 1766 was the first of its kind in the world. It contained provisions on freedom to write and to print, and a ban on censorship. What was particularly ground-breaking in this Act was that it also contained provisions on the right to obtain documents from government authorities – what we today call the Principle of Public Access to Official Documents.

The Freedom of the Press Act was adopted at a time when Finland was part of the Kingdom of Sweden. What is telling is that several of the people who stand out as crucial for the establishment of the Act – even perhaps the foremost of them, Rector and Member of Parliament Anders Chydenius – came from the eastern half of the Kingdom, modern-day Finland. The effects of the Freedom of the Press Act of 1766 became clear as a tidal wave of newspapers, pamphlets and documents poured out to the public. By 1772, however, the political revolution of Gustav III put a stop to this development and freedom of the press was gradually curtailed.

Freedom of the press was only restored in Sweden through the 1809 Instrument of Government. However, as several of the authors state, the curtailments to freedom of the press introduced by Gustav III and his successors entered into force before Sweden and Finland separated. For Finland, which became a part of the Russian Empire afterwards, the separation in 1809 meant that the curtailments on freedom of the press introduced during the Swedish period continued. This system was in force until 1829, when an Imperial Act on censorship was introduced, which sought to attain complete, centralised preliminary inspection. When Finland won independence in 1917, freedom of the press and a ban on censorship were reintroduced. Subsequent developments in Sweden and Finland are described in detail in different contributions to this book.
In Finland’s current Constitution from 2000, freedom of expression is regulated in a single paragraph. More detailed provisions are issued through general law. Swedish constitutional regulation of freedom of the press and freedom of expression stands out as unique, also as concerns its level of detail. The system is not a new one, but it goes furthest when referring back to the 1766 Freedom of the Press Act. The purpose of placing regulation at the constitutional level is that there must be time for careful consideration so that temporary and sudden surges of opinion may not be reflected with immediate effect.

Freedom of expression is the cornerstone of democratic society. It is not possible to imagine a democracy without freedom of expression. It should never be taken for granted, however. Our own history has taught us that, and it is clearly evident today when examining the world around us. Over the past few years, freedom of expression and our open society have been subjected to a series of attacks.

To a great extent, the current debate deals with the limits of freedom of expression, what we are allowed to say, and threats and hate in social media. It is a good thing that this debate is under way. It is also important that the debate deals with how we safeguard and disseminate ideas about openness and freedom of expression. Sweden, with its long history of freedom of the press and freedom of expression, can make a valuable contribution here. Safeguarding the Principle of Public Access to Official Documents, freedom of expression and our fundamental laws requires knowledge and commitment, not just from the legislators but from each and every one of us. My hope is that this book may serve as a contribution to new, in-depth knowledge of the long history of the freedom of the press in Sweden and Finland.

Stockholm, 11 October 2016

Urban Ahlin
Speaker of the Riksdag
Free exchange of opinions and comprehensive enlightenment through free media are something easily taken for granted today. Such has not always been the case, however. Freedom of the press and its twin, the Principle of Public Access to Official Documents, broke through under difficult circumstances during the Parliament of 1766 in Stockholm and their survival has not been self-evident during the long course of their development.

The breakthrough occurred with the adoption of a new ordinance with the status of constitutional law: the Freedom of the Press Act of 1766. It concerned the freedom for citizens to avail themselves of the technology of the time for mass communication – that is, the freedom of the press. In today’s situation, free formation of opinions and comprehensive enlightenment encounter substantially different conditions. Technological and economic developments bring forth new ways of communicating, either to the masses or more individually. Moreover, developments at the political level create new conditions causing legislators to establish effective rules for protection of freedom of expression in the media. Collaboration among states also affects media policy.

The Freedom of the Press Act was adopted at a time when Finland and Sweden were part of the same Kingdom. Several of the driving forces behind its achievement came from the Finnish part. There can be scarcely any doubt that freedom of the press and the Principle of Public Access to Official Documents are today deeply rooted among the people of Sweden and Finland. But continued favourable development will require well thought-out ideas, especially in the area of legislation. Knowing our own history well will help. Why do we have the system we do? What is it for? Is it worth defending? Or should we try to create something else?

After discussion in the Parliamentary Committee on the Constitution, a decision was taken to arrange the publication of a book and to hold a seminar in the Riksdag in view of the 250th anniversary of the Freedom of the Press Act of 1766. Bertil Wennberg, former Head of Secretariat of the Committee on the Constitution, was appointed project coordinator. The work of preparing publication of the book was then performed in an
editorial group consisting of Professor Hans-Gunnar Axberger, former President of the Svea Court of Appeal Johan Hirschfeldt, and the committee secretary of the Committee on the Constitution Kristina Örtenhed, LLD, as members. The project was paid for by the offices of the Parliament Administrations, in Stockholm and Helsinki, the Bank of Sweden Tercentenary Foundation, and the Swedish-Finnish Cultural Foundation.

This anniversary publication contains 22 essays by authors from Finland and Sweden. The purpose of the book is to disseminate knowledge of the long history and deep-rooted support of the legal principles of freedom of the press and freedom of expression. The aspiration has been to illuminate the tradition with new knowledge and to describe how today the tradition meets a world in rapid development. One leading aim could be said to be to uncover a living inheritance from 1766.

Upon its entrance into the EU, Sweden also declared that the Principle of Public Access to Official Documents – especially the right to read official documents and constitutional protection for the freedom to communicate information – are and will remain fundamental principles that constitute a part of Sweden’s constitutional, political and cultural inheritance. The Committee on the Constitution stressed the importance of these principles in Sweden’s constitutional system, saying that they could not be transferred to the EU to be standardised without Swedish sovereignty being undermined to a substantial degree. It is hoped that an in-depth understanding of our own tradition will strengthen our ability to preserve these core values.

The authors themselves are responsible for the content of their essays. The first chapter of the book paints an image of the world of ideas in which the legal breakthrough of freedom of the press could take place. This chapter also contains a portrait of some of the driving forces behind what happened. Jonas Nordin describes how European social thinking in the eighteenth century developed under the influence of economic, political and legal factors so that subjects were becoming citizens. At the dawn of the eighteenth century, freedom of expression for the individual was unknown in any country. At the end of the century, views concerning people’s right to information and to express their opinions had changed. Over the course of the following century, freedom of the press became an issue that those in power in many places had to deal with.

How this development expressed itself in the Kingdom of Sweden is depicted through texts describing a few, especially significant, personal efforts and the courses of events they set in motion. One sign of the time was the 1759 publication *Tankar om borgerliga friheten* (Thoughts on Civil Liberty) by Peter Forsskål – a disciple of Linnaeus – in which the author
defended the thesis that limited government and unlimited freedom to write are absolute preconditions for civil liberty. His thinking can be regarded as the predecessor to what would become a primary element in the rules on freedom of the press: the Principle of Public Access to Official Documents. Forsskål, however, died in 1763 during an expedition to what is now Yemen and could not witness when freedom of the press was finally established in 1766. His background and efforts are depicted in an article by Ere Nokkala.

Developments in economic thinking went hand in hand with striving to shed constraints on the press. This becomes clear when studying the significant personal efforts made by the government official and writer Anders Nordenrantz and Rector Anders Chydenius. Both worked to abolish the mercantilist regulations in the area of economics. And on the question of freedom of the press, Nordenrantz served as an intellectual mentor and inspiration for those in revolt – especially for Chydenius. In this book, Nordenrantz’s contributions to these developments are described by Lars Magnusson.

Anders Chydenius was a man with fighting spirit who fought for freedom in all areas. He based his ideas on the fact that the Creator had given both nature and human life a natural system that humanity could achieve if freedom was allowed to prevail. People were created equal, and it was a question of standing up for the weak against the rich and the powerful. Everyone should be able to influence society. According to Chydenius, the shortcomings of the prevailing system were obvious: political governance, corruption and unjust treatment. In his opinion, openness, access to information and public discussion were the very foundation of a better society. Freedom of trade and freedom from religious compulsion should prevail. Chydenius’s efforts appear to be crucial for the breakthrough of freedom of the press in the Riksdag of 1766. His life and deeds are described in this book by Gustav Björkstrand.

The course of events in the Riksdag from 1760 to 1766 are depicted in detail by Marie-Christine Skuncke. It was by no means obvious how things would end. Different ways of regarding the general public came to the surface. The people could be described by one member of Parliament as an enlightened and impartial judge, and by another as a multitude of feeble-minded individuals who did not possess sufficient judgement to examine the Kingdom’s affairs. There was still a long way to go to a modern democratic outlook.

Within a short period of time, the freedom of the press established in 1766 met with difficulties. The events that took place in the period up to the revolution of 1809 are touched on in several contributions. The princi-
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samples from 1766 were gradually lost in practice. But the memories from the year of the breakthrough lingered. A struggle took place in the Riksdag of 1800 on the printing of the record regarding the administration of the Riksbank and the National Debt Office. Lively arguments in the spirit of 1766 were put forward. Georg Adlersparre and Hans Hierta, who would make significant efforts when freedom of the press was regained in 1809, played important roles here. The struggle is described in the contribution by Cecilia Rosengren. Firm economic realities lay behind the opposition’s demands for public access to documents. They wanted to see the bank as a matter for the Swedish general public, not just as an affair for the estates.

The historical and legal context in which freedom of the press and public access to official documents could be achieved in 1766 is comprehensively summarised by Rolf Nygren. Since the second half of the seventeenth century, fundamental changes to the question of philosophical approaches had begun to liberate paths of thought from theologically deadlock limits. In the field of economics, new ways of thinking manifested themselves. Freedom of the press was seen as a means of breaking away from antiquated regulations. The Freedom of the Press Act of 1766 came into being in order to clear away obstacles to the improvement of society. The utilitarian perspective was crucial. The concept of human rights and participatory citizens lay waiting.

The Finnish half of the Kingdom was separated from Sweden after the war of 1809. As an autonomous Grand Duchy, the country came under the sovereignty of the Russian Empire. The laws that applied during the Swedish era remained in power under the new regime. On the question of freedom of the press, the more limited system introduced during the reign of Gustav III until 1809 thus remained in force. Attempts at a periodic press nonetheless sprang up. This state of affairs did not remain however. In 1829 an imperial ordinance on censorship was issued. Freedom of the press was later restricted even further. Developments in Finland are described in the second chapter of the book, in contributions by Henrik Knif and Päivi Korpisaari.

After Finland’s liberation, the country became an independent republic in 1917, where freedom of the press and a prohibition on pre-censorship were reintroduced. The 1919 Instrument of Government for Finland guaranteed Finnish citizens “freedom of the word and the right to publish documents or pictorial representations in print without obstacles to this being placed in advance”. This tradition, with its roots in the Freedom of the Press Act of 1766 and in the experiences of the Russian era, can be traced in this provision; the decrees on the exercise of those rights, how-
ever, would be issued through law. The status of freedom of expression remained unstable during the years between the two world wars.

Developments concerning the issue of censorship as regards Finland are depicted in Chapter Three by Kai Ekholm. He describes the situation during the entire era of independence. These circumstances would be influenced by the struggle against external enemies during the Second World War. After the end of the war, consideration for the country’s fragile foreign policy status played a major role. The article discusses the period from 1947 up to 1994 under the heading “The fight for values and foreign policy self-censorship”. Ekholm brings his account up to current conditions, indicating the trends that should be monitored in the cyber age.

In Finland’s new Constitution from 2000, freedom of expression is decreed for one and all. The right to present, disseminate and receive information, opinions and other messages without pre-censorship is part of freedom of expression. More detailed provisions on freedom of expression are issued through law. Everyone also has, according to the Constitution, the right to acquaint themselves with public documents and recordings. Documents and recordings in the possession of government agencies are public, if public access has not been limited through law for compelling reasons.

In the Kingdom of Sweden that remained after the split from Finland, freedom of the press was restored in accordance with the basic principles that became generally accepted in 1766. The new Constitution – the Instrument of Government of 1809 – contained a statement of principle on freedom of the press. This was accomplished through new acts on freedom of the press in 1810 and 1812. The new successor – who would soon become King Karl XIV – was no friend of freedom of the press, however. He was nonetheless compelled to manage the system that was revived in 1809. His influence lay behind the power of confiscation that would be in force from 1812 until his death in 1844.

Developments in the regulation of Swedish freedom of the press are described in this book by Hans-Gunnar Axberger. Freedom of the press in Sweden was pushed through for political and constitutional reasons and not, as stated by those influenced by Enlightenment philosophy, in order to fulfil natural rights, he argues. Despite the fact that the need for curtailment in periods of unrest or in consideration of the safety of the Kingdom now and then was met with understanding by those in power, the link to public welfare gave freedom of the press stable public support – perhaps more stable than if the aim had been sought in representations of freedom and rights, which tend to be relativised when rights are set against each other. In principle, Axberger’s account is brought up to the state of things
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today in the area of law on press freedom. The Freedom of the Press Act currently in force is from 1949.

The extent of reach into new media of the principles of the press freedom law that came about through the 1991 Fundamental Law on Freedom of Expression is described by Bertil Wennberg. The article also briefly describes developments in the field of mass communications and the general notions of freedom of expression that justified the expansion of the principles on press freedom.

The Principle of Access to Official Documents is a fundamental and original part of the Freedom of the Press Act of 1766. This principle has long been the identifying characteristic of the Swedish form of government. It is also something that both Finland and Sweden are working to defend and spread internationally. Developments on the European level are described in detail in this book by Helena Jäderblom.

Freedom of the press set down in fundamental law can also make it possible to express undesirable or provocative statements in printed documents. But there has never been any question of unlimited freedom in the Swedish tradition of press freedom legislation. In a list of criminal offences, the Constitution restricts under what may be disseminated through printed publications. Slander and other crimes are to be counteracted through indictments after the event. But within the framework so indicated, journalistic and cultural life must be able to develop freely. The press freedom jury, which would come into existence in 1815, has defended this development well.

Some of the press freedom trials that attracted attention during the nineteenth century are dealt with in Chapter Three in a contribution by Carina Burman, including the indictments against Erik Gustaf Geijer, August Strindberg and Gustaf Fröding, all of whom were acquitted by juries. The legal conditions of cultural life during the twentieth century up until today are illustrated in a broad perspective by Agneta Pleijel. It not infrequently happens that named individuals are discussed in literary or other artistic works in a way that could arouse contempt for them. In Sweden, indictments for the content of a work of literature have not been brought since 1967. Freedom of expression must be broad, but today it may be uncertain where the boundaries lie. Being able to express yourself freely is the cornerstone of democracy. What may be expressed depends on legislation, but also to a great extent on the measure of moral courage that the defenders of freedom of expression are able to show.

Two articles by experienced newspaper veterans illustrate Swedish developments as concerns the issue of access to news sources and responsibility for journalistic activities. Nils Funcke points out deficiencies in the
application of the law on the issue of access to public documents, and a
tendency among lawmakers to limit public access to documents and the
freedom to communicate information. Proposals may seem small and
insignificant by themselves – even justified in certain cases. But small
changes add up to major consequences, Funcke warns. Pär-Arne Jigenius
discusses the role and function of the legally responsible publisher in the
modern world of newspaper, in which new economic conditions impose
changes on the way the business is organised. In his opinion, technological
and economic developments are moving in the direction of a fusion of the
forms of constitutional regulation and ethical self-reorganization of mass
media operations.

Developments in the areas of culture and journalism are summarised
by Ola Larsmo as three steps forward, two steps back. Oddly enough, the
questions of modern freedom are being asked in nearly the same way as
they were formulated in the Sweden of the 1760s. New technology creates
new spaces in which the struggle between friends of publicity and the su-
pervisors of power takes place – but the questions are almost exactly the
same. We must remind ourselves constantly that we have a legacy to pro-
tect – a legacy that is at risk.

The separation of Sweden and Finland in 1809 meant development east
and west of the Gulf of Bothnia diverged as concerns the issue of free-
dom of the press. The constitutional status that now belongs to freedom
of expression in the two countries enjoys deep-seated public support. But
it is not the same thing. In Sweden, freedom of the press and freedom of
expression in newer media are regulated in fundamental law, which is
founded on the tradition of 1766 and 1809. On the establishment of the
new Swedish Constitution in 1809, freedom of the press appeared as a con-
stitutional institution, a third State power alongside the King and Parlia-
ment that over time would allow the new Constitution to be improved and
would bring with it favourable development for the benefit of the entire
society. As far as can be ascertained, the constitutional regulation in force
in Sweden is unique in its scope and degree of detail. In Finland, post-war
work on reform led to the provision, in the Finnish Constitution of 2000,
on freedom of expression for everyone. After a series of prolonged and
partly painful experiences, today both countries essentially have a similar,
or closely related, system on the issue of freedom of the press and freedom
of expression, though regulated at different levels in their legal systems.

In two articles in Chapter Four, Martin Scheinin and Johan Hirschfeldt
describe the contradictions and turning points in the issue of the devel-
opment of constitutional protection for freedom of expression and of the
press. The advantages and disadvantages of detailed, operative constitu-
tional regulation such as the Swedish and an overall fundamental structure such as the Finnish are elucidated in detail here. In both articles, the account is brought up to date with the emergence of social media and the status of the national legal systems in the European context. Continued development does not appear as a given.

The concluding articles are written by Björn von Sydow and Tarja Halonen. Here, the situation of today is regarded from the point of view of experienced politicians. It is confirmed, with all clarity, that freedom of expression is now regarded as a fundamental human right. How this right is to be ensured in a globalised world is something that must be met and dealt with in a political system. The significance of common values and the capacity of a general view available is becoming more and more apparent.

A properly understood idea of where we are and how we got there is necessary in order to be able to make wise path choices in our continued wanderings. One intention of this book has been to illuminate the long tradition of laws on freedom of the press with new knowledge. It is published in Finnish and Swedish, and will also be translated into English. When the book is published, it will be up to the reader to determine how it has fulfilled its task.

Stockholm, October 2016

The Editorial Committee

Bertil Wennberg   Hans-Gunnar Axberger
Johan Hirschfeldt   Kristina Örtenhed
Introduction to the English edition

The Swedish edition of this book was published on 2 December 2016 in connection with the 250th anniversary of the 1766 Freedom of the Press Act. The English translation has the same content as the Swedish edition unless otherwise indicated.

The translation was carried out by the translation company Space 360. The English version was then reviewed and further developed by Rebecka Charan, Russell James and Luke Halls at the Section for Language Review and Translation at the Riksdag Administration. The authors have also had the opportunity to review the translations.

The closest equivalent of the Swedish word “yttrandefrihet” in English is “freedom of speech”. In the European Convention for the Protection of Human Rights and Fundamental Freedoms, the expression “freedom of expression” is used. The same expression is used in the official English edition of the Swedish Constitution. The same expression is therefore used in the English edition of this book. “Tryckfrihet” is translated as “freedom of the press”.

The joint bibliography and list of references at the end of the book now includes references to English-language editions of certain acts of law as well as English editions of some literature. Links to certain electronic sources are also provided.

Stockholm, December 2017

Bertil Wennberg          Kristina Örtenhed
The 1766 Freedom of the Press Act.
The National Library of Sweden.
Photo: Mårten Asp.
Kongl. Maj:tts
Nådige
Ordning,
Angående
Skrift- och Tryck-friheten;
Gifven Stockholm i Råd-Tammaren den 2. December,
1766.


Tryckt uti Kongl. Tryckeriet,
ADOLPH FRIEDRICH med GODS Næde, Sveriges, Böthe och Wendes König
nung x. x. x. Arsvinge til Norge samt
Hertig til Schleswig Holstein, x. x. Efver witterliget,
At så Vi eftersinnat den första båtad Ammarkheten af en rättstatsens
Skissve och Trycket frihett tillfället, i det en obehindrad uppsäg-
ing uti hvarehanda nyttiga ämnen, icke alenast länder til Wettenstat-
er och goda flogerus uppodling och utspriande, utan och gifver en bvar
af Märe trogne underrättare omnigare tillfälle, att thers bättre känna och
vårda et visligen inträttad Regeringsfatt;
Asven som och thenna fri-
het bör anses för ett af de bättre hjelpeomedel til Sedernas förbättring och
Vaglydnadens befrämjande, så misshuk och olagligheter genom trycket
blifva för Ammarkhetens ågan ådagalagde; Så haves Vi i Nåder fun-
nit the förete i detta måt gjorde förbättringar rartiva then behörig rät-
telse och förbättring, att all tvekyhigkeit och ett såvart tvång, som med
thet påsyfaste ändamålet ej bresta kan, måge utur vågen rödjas.

I såvart affendede, och sidan Vi hørerfor inhämtn Mifens Stan-
der underbånde uutsändande, haves Vi i Nåder godt funnit, att thet tilskörene
inträttade Censoris Ambetet, nu mera aldeles bör upphör, samt ej eller
Bårt och Mifens Eanglis- Kollegi hårdenster tillsomma, at ösverje,
gilla eller ogilla the til tryckning årnade Sriter, utan komma Authori-
erne hjelstve, jaentæ Bottryckarne, för thet som i trycket utgives, efter
thenna Bår Nådiga Förordning, hvargenom the första Stadgar om Cen-
slaren aldeles upphämas, att ansvarige vara; Dock hvad angår skadelige
Böcker insändande och forslående på Botfloane, förblifver tillsynen thers
hårdenster hos Bår Eanglis Kollegi och medarbetende Con-
storier, som äga thersforhand hans hålla, att ej några förbudne och försör-
iska Böcker, antingen uti Teologiska eller andra ämnen, måge så ut-
spridas.

§ 1. Ingen ware tillåttit något Skissve eller genom trycket utgif-
wa, som strider emot Bår rätta Fros besånelse och then rena Evange-
liska Likran; Hvar, som thermed beträdes, ware til trychandrade Daler
Silfvermants bätter förstallen.

Innehaller Skissen småelse emot God, warede dömd efter All-
måns Lag. Och på thet irrige lösatsers insmygande thes bättre före-
kommas må, stöda alla Manuscriptor, som i någor måtte angå Likran och
måra Christendoms trycken, föret af närraste Constillors öfverså, och
ingen Bottryckare, med Thvåhundra Daler Silfvermants rite sig för-
drista, at utan Constillors påfristne tillägg, hwissen och tillika tryckas
bör, sådana Skriver genom trycket utgivna.

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These Grundlagar, med s鐑, som Rikens Ständer för orygellige fassståld, eller fassstållandes warda, må ingen sig fardrija genom skrifter eller tryck i någon mäste bestreda eller anfatta, vid Trehundrade Daler Silfvermynts böter.


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Skrifter någor, smådskrift, eller thet ellevs hymfeligt och förkrenligt år, mot Rikets Ambetsmän, eller någon annan Medbergare, plikt efter Allmän Lag. Så ware och ingen tillåtit, att i allmänna skrifter sig betjena af smådeliga utlätelser om Krönna Husvunnt eller theras närmaste Bloodförvanter och samtida Regerande Magter; icke eller at skriva och i trycket utföra något, hwaringenom en uppenbar losa främjas eller förstvaras, och således med årborhet, en rättstoffs natuurlig och Christelig Sedolara, samt thes grunder, icke öfvere enslämmer; Hvar som häremot brytere, ware till Trehundrade Daler Silfvermynts böter förfällt.

S. 4. Boktryckaren utfäster på Tittbladet Försättarens namn, så framt thenne ej åsundbar wara onämnd, hvilket icke förnetas bör, och tage Boktryckare i sådan händelse till sin sakerhet, hans striftelige betes, at han skriften försättat; Dock bör alltid, ehuvad skriften år utan namn, eller icke, thera såttas Boktryckarens egit och Ståndens namn, ther tryckningen fält, jemte Kratslet: Försommmar Boktryckare thet, löte Trehundrade Daler Silfvermynts.
År Skriften utan namn och gitter ej Bohstrykaren besvissigenhet upgisva, när åtal therä givres, stände stelt i alt ther ansvar, som skriften försätter stå bordt; Men gitter han Authorens upgisva, ware från alt ansvar fri.

Af alt hvad som tryckes, ware Bohstrykaren skyldig, at efter första vanligheten astemma Sex Exemplar, så snart the hov tryckte, theräf Mått och Rifsnens Colloquium, Mått, Archivium, Mått Bibliothegue och alla tennes Academierne i Kiflet, hvar sitt Exemplar undsår: Försummar Bohstrykaren theratta, böte Ethundrade Dal. Elisvormynt: och på thet förbrytelse emot thennan Mått Nädiga Förrordning, må wedderbörssigen bestraffe varda, skal ther icke allenast tilhöra Mått, Justits Cavaller samm wedderbörssige Ombudsmann och Fiscaler, at therpå hafvia ett någo infsende, samt befordra then brottssige till Laga nåpås; Utan mede Båt och tilltäta, thet hvar och en af Bårte trogne undersätare må åga rättighet, att i sådan sat, som angåer brott emot thennan Förrordning, tolan första, hvilket alltid bör se på ordentlighet satt vid wedderbörssige Domstol, efter fregången Laga stämning, och Varertere å ömse sidor theras Laga Rättegångs förmoner så till gods njuta; Äge och Domaren genoms vid Rättegångens hörjan att pröfssa, hurumilda såt vara kan, at alla besyntliga exemplar af then öfverklagade skriften måge til fakens slut under gvarståd och saktet förmör ställas: Varer det skriften fultligeligen för skadelig och förbuden anseeda, bora alla Exemplaren konfisceras och förböras. FINNES ÄR KÅRANDEN UTAN TRÅDESSIGA FLÅT HÅFVA åtal gjordt, stände han samma straff, som then anföglade bordt undergå, om han brottssigt varit, och upprätte therjemte allan stada.

§ 5. Hvaod Wi således i the trene försämende §. §. i Nåder tydeligen stabbat om thet, som i strifvande och tryck bör aftas förbudit, må ingen utom thes bofståsveliga innehåll på något satt droga eller förstaida, utan bör alt hvad theremot icke klargigen strider, anjes lagvisvit at Skriften och Tryckta, på hvad språtk eller uti hvad skriftart thet kan vara förättad, antingen uti Theologiska ämnem, Sedolåran, Historien, eller någon af the lärda Wettenkaper, angående then allmanna eller enstöbte husbåtningen, Collegiers och Ubsmåns gброål, Societer och Samfund, Handel, Näringer, Glödger och Konster,AndServehanda Uppgifter och inrättningar, med mera sådan, som til Allmåhetsens nöta och upplysning lända kan: Åsven som och ingen färmenes utgifsna afhändningar angående Rifsnens Allmanna Rätt och dertill hörige styrken, tills uti en hvar, allenast Skriften ej i någor måtto fränker the i 2:dra §. här omväntföre nambe vrogetige grundar af Regements Försättringen, må åga obehindrad frihet af utgifsna sine tankar om alt, som Medborgares både rätt och skyldigheter rörer, samt til någon förbättring eller förekommando af sådige fölger tjena kan; hvilkens frihet och bör strække
fig till alla Sagar och församlingar i gemens samma, som redan faststälte år, eller händen efter stadgade varda.

Varje och i lika mätt tillställ, att skrifva och trycka låta om Rikets förbindelser med andre Magter, samt fördel eller skada af Äldre eller Nyare Förbund, eller terom gjorde Propositioner: I hvilket afseende samväl alla med Främmande Magter flutna Afhållningar måge få tryckas, dock ej någon del theraf, som hemlig vara bör; Mindre må therforef något som andra folkslags Borgersliga församlingar, theras fördelar, affigter, Handel och hushållning, bygda och svaga, Lynne och Seder, befrister och mistag, antingen förstilte, eller jemmuförhese vis, något afhandla och trycka låta.

§ 6. Under denna Tryckfrisst komen therhast att begravas alla Skrifvnäringar, Species Fauci, Handlingar, Protocoll, Domnar och Utflag, lika ehund thet till den förutgivna tiden år, hörande eller händes efter begynnas och fortsätta, föreles, förs och utfärna både för, under och efter Rättegången vid Under-Domsolar, Hofer och Drasar-Råter, Collegier, Båre Befallningshalsvande, Consistorier eller andre publi- que Bår, samt utan åtskilnad av målens egenskap, antingen these år, Civil, Crimeinelle, Ecclesiastique eller eljest Religions fridigheter i mer eller mindre mätt hörande; Afven och Äldre och Nyare Besvär och Förklaringar, Deductioner och Contra Deductioner, som till Our Justitia Revisjon blixit intresse och intersive, samte the i Our Nedre Revisjon hånede Protocoll, lika med the Imhets Bref och Memorialer, hvilka is- från Justitia Cancellerens Expedition redan blixit utfärda, eller fram- deles fonna utfärda: Dock ej någon som helstas af utlof och tryckar mer af alt thereda, antingen in Extensio eller uti sammandrag såd- som en Species Fauci, än han therof sjelf åftor och för nodigt finner; och hvilket uppo anmåten therom, genast bör utsemas till en hvor som sig therom anmåter, vid ansvar som uti næsthänder § såges: Men uti Brotmål, hvilka genom månlig förlikning ensildte Personer emellan bilagde blixit, må ingen utan Parternes bifall, så länge the annu lef- ma, theren frisst nytta: Afven som i såd något, som rörer grossva mindre fande misändning och skyggelser, hädviser emot Suld och Velds- ligt Dystrer, leda och listiga påfunden vid therse och andre såvare Brot- mål, Biskopser och annat dyslik, skulle i Ransknäringar eller Dom- nar inphista, bör sådant aldeles utestutas.

§ 7. Emedan ett på lag grundad Votum icke behöfver döljas, ther Utflaget intet annat är än Domarens röst: En rättvis Domare ej eller bär att funna för Manniskor, när han äger ett tryggt sammnere, trovat om thet gläder honom, att hans omvådighet blixte rånd, och therigenom hans heder ifran minskar och rödriga omömen tilltha be- wærdas; Utflas at förekomma the fleste flags afventyrliga fölger af
vberåttamna omröstningar, finne Mi theslike i Nåder för godt, dhet
måge de, under en ej mindre onödig än stadelig tysthet nu mer icke länge
gre hållas; Hvarföre, evo som sig anmåler, ehvad han har del i sa-
ken eller ej, at uti mål, hvor som hålt votoing förraart, vilja låta
rycka äldre och nyare omröstnings Protocoll, må de så snart Dom
eller Utslag i saken fallit, genast emot lesen utgivvas, så vid hvart och ett
Votum, den vouterandes hela namn bör tillika tydeligen utfåttas, antingen
het är vid Under-Domstolarns, eller Hof- och Öfwer-Råterne,
Collégierne, Executions-Gåten, Consistorierne, eller andre Publique
Bärk, och deid vid förlust af Ambetet för hen som detta vågar,
or sig i någor mått o häremot växer; Kommandes i följe häraf tyck-
hets Edern att hådenefter i thenna del jemkas och rättas.

S. 8. Med Herrar Riffens Råds egne Voteringar, förutan i the
mål, som hemlige Ministerielle Ärendor angås, så ock med Betänkandene
och Förklaringar öfver the anföreningar eller besvar, som hos Riffens
Ständer anmålas skola, eller anmålte blifvit, ware, på enahanda grund
och fäst, som i föregående §. omförmådes, Lag samma.

S. 9. Femte Råttagångs och andre osvannamde Handlingar skal
sket ock stå hvor och en Part sittt, som hanswer någon såt eller nå-
got annat thes rättighet rörande mål uti hvad Domstol eller Publick
Bärk dete vara må, såsom ock in för Ds Gjelswe, Riffens Ständer,
theras Deputationer och Utskott, till at theröfrer låta trycka en Berä-
telse eller så kallad Species Facti, med the therit hörande Handlingar,
som han for sig nådigt pröfvar: Dock at han härutinnan håller sig
vid fanningen, så fritt honom vara må at undvika thet ansvar, som
lag förmå.

S. 10. Ofstermora varder Tryckning tillåten af alla the Domar
och Utslag, Resolutionar, Rescripter, Instructioner, Constitutioner, Regle-
menter och Privileger, med mera dpliket af hvad art och bestämmel dete
måte, som för thetta år utgångne, och ån widare utgå ifrå
Båt Råd-Cammare och Canclie Departemens eller Expeditionner, samt
Bäre och Riffens Hof- och Öfwer-Rätter och Collégier tillika med the-
ras och andre Ambetsmåns Ambets Bref; Hit hära ock alla Societ-
ters och Bärks samt enslidde Personers Memorialer, Anföreningar,
Projekter och Förslagar, Betänkande, Besvar, med Utslag och Svar therad,
sjäum och alla Ambetsmåns berwiliga så Laglige som vlaglige gjordom
och förråttningar, med hvad sig thervid tildragit, nyttige eller fladelige.
Dh bör til hen anban uti alla Archiver för tligång lemmnas, at sådana
Handlingar så in Loco afffristå eller i bemittnad affristå utbehomma;
Dh thet vid ansvar til giörandes, som uti 7. §. af thenna Förord-
nings tåddgåt är.
S. 11. Af a Riksdags Relationer ifrån hvad art och ställe the än blifvit för dessa utfärdbare, måge utstå så tryckas, af, hvem som håll sig theri till anmälar, dock at hvad theruti omformässes, som under Operation eller Asbording med på frammando orter hemligt fråbver, ej må utlefweras och allmänt göras. The Riksdags Relationer åter, som framdes komma att avgifvas, wele Wb Nådig försorg therom haft, at the på lika satt måge genom trycket utkomma, i så god tid, innan hvarje härfallande Riksdags början, at en och hvar må äga tilfalle, ej minbre at om tillståndet i Riket göras sig i möjligaste mätt underrattat, än at fathera medelt nödige erindringar samt nyttige förslager och upgifter kunna till Allmänt väl thelo lättare bidraga: Hvarför rökan the Memorialis och Distaminia ad Protocollum, som till Rikstens Gränder ingifvas, jemväl sitt måge tryckas af hvem ther hållit offar. Afsvenledes tillåtes at trycka Depurationernes Betänkande med theras Protocoller och voteringar, på satt som 7. s förmar. dock ej förr än Betänkandet til Plena avro ingifne. Och som Regerings fästet fördrar, at alt blifver lagligen ofgjordt, och at alle Börc trogner undersättare må vara ofverlygade om theras Föllmäktiges redelige uppsörande, vid Riksdagarnes; Så lennas frihet at trycka alla Grändens Protocoll och Voteringar på förenämnde satt, hvilket åsven ware sagt om alt hvad ifrån Secret. Utstöttet til Plena inkommer, jemväl och Börc egne til Rikstens Gränder ingifne Nådig Propositioner, som ej innehaller något hvad hemligt vara bör.

S. 12. En sonfåolyck Historia om framfarne Konungar och Regenter samt theras Ministers, har både i äldre och senare tider hos the måla folkslag warit högst aftad, såsom närmast ledande till migtiga förreval, at meddela the Regerande Herrar och Personer rådmåttberde efterdömen af leverliga och lösvarda bedrifter, men theromto högstnödige warninger emot förbrändade, obestänkte, loslydige eller ved grovme och nödige rådlof och gärningar, såsom om at the lydande kunna af förriga Regements handelser, the hem tilstündigty skildheter, fri och rättsigheter, samt Allmän och ensbligt såfaret therfor komma, fannas, förstå, måda och försversa. Nu på thi uti sådana Historiske arbeten ej något såfarna mätte, som till theras fullständighet sjena kan, wele Wb jemnål i anseende til them utfårädda friheten i penor och Tryck så länge, at alla the synnerliga är hemlige, dels mer bekante handelser eller bekante Anecdotes, hvilka under framfarne Regearingar, så här i Riket som annorstådes sig tildratt, måge tillika med Politiska Reflectioner åsver the samma så allmänna göras.

S. 13. I öfrefigt wele Wb i Nåder bärmed än ytterligare förklara, at som thert blefve för mjudigtat at alla föresfallande ämnens, mäl och årendet sår moga utatta, är Wb Nådige milje och Befallning, ther samt-
samtliga Måste trogne undersätare måge äga och utöfva en fullkomlig och obehindrad frihet, att uti Trycket allmänt kunnoget göra alt hvad som genom de trene första §. § eller elsje uti thenna Wår Rådige Förordning icke finnes uttryckeliigen förbudit, och att annu mindre något som äfver ala här frammanföre utmärkte tillätselige mål och änderke kan blyfva anmärkt, pamint eller elsje reflections-visor i dags hujset framlagt, någonhå må under förevaldning alt innebåra fabel, fander eller Critique, förkastas eller ifrån Trycket utsångas.

§. 14. Och på thot Måste trogne undersätare framgent må om thenne utstakade Skrif- och Tryckfrihets ofvetkeliigen beständ äga all then fullkomlig trygghet som en orygelig Grundlag medförer, finne Wi godt härmed förklara, het ingen ebo han vara må, wid Wår Kungnellsiga Gnåde skal sig underså, någon then ringaste förtydning eller infräknning av detta Wårt Rådige Förordnande tillhyska, mindre at af egan myndighet til en sådan infräknning i meer eller mindre mått, forsek göra, samt at Wi icke ews Gjelfve melé tillåta någon then min-

§. 17. Thet uti thenna Wår Rådige Förordning utfatte Böter komma at delas til Trefskiftes.

Thet icke, som notterbör, hafwe sig hörfammeligen at efter-
såta. Tiliyttermera mihu hafwe Wi thetta med Egen Hand underbris-
mit, och med Wårt Kongl. Sigill befrästa lättet. Stockholm i Råd-
Camman ren enh 2. Decembr. 1766.

ADOLPH FRIEDRICH.

(L. S.)

Joh v Hicland.
THE WORLD OF IDEAS AND
ITS ACTORS IN 1766
“We declare that we have found the great benefit the general public has of an honest freedom to write and freedom of expression.”

*From the 1766 Freedom of the Press Act*
From seemingly subjects to enlightened citizens
Censorship and press freedom from the Middle Ages to the 18th century

Jonas Nordin

His Majesty’s Gracious Ordinance Regarding the Freedom of Writing and Printing (Kongl. Maj:ts Nådige Förordning, Angående Skrif- och Tryckfriheten), issued on 2 December 1766, would never have seen the light of day had it not been for the particular political circumstances that prevailed in Sweden during the Age of Liberty (‘frihetstiden’). This is the period in Swedish history between the death of Charles XII in 1718 and the coup d’état by Gustav III in 1772. Over almost two generations, Sweden enjoyed a peculiar republican form of government while at the same time experiencing sweeping changes to the social climate, ideas about constitutional law and political culture. At the beginning of the Age of Liberty, Sweden was characterised in religious, political and cultural matters by traditions established many centuries earlier. By the time the period ended with Gustav III’s reactionary revolution, the intellectual atmosphere had been changed in fundamental ways and Sweden had taken the first step towards a modern conception of society. This transformation could only be temporarily slowed by the new, anachronistic form of government.

Developments during the Age of Liberty reflected currents of thinking which were moving across the western world, but at the same time were firmly rooted in Swedish domestic politics. The Riksdag system, with its comparatively open political debate and – for its time – a considerable readiness for radical reform, has paradoxically led historians to obscure the radical ideas that emerged. This is because the Riksdag system allowed for divergent opinions to be put forward in matters of national policy, and big ideas could therefore be hidden in pedantic and detailed motions tabled on policy issues. In contrast, in countries with more monopolistic
forms of government, political visions had to be expressed in general terms of principle. Such ideas most often exerted a negligible effect on current political issues, but with their generalist claims they contributed to changing European social thinking over the longer term. Sweden, like other European states, was influenced by this ‘Enlightenment’ and in the final decade of the Age of Liberty we can see how these currents from the Continent helped radicalise domestic policy-making.¹

¹ ‘The Age of Liberty’ was a term in contemporaneous use. *En Ärlig Swensk* (‘An Honest Swede’), a political periodical, wrote in 1755 that ‘we have also been fortunate in that, throughout the Age of Liberty, we have had such venerable leaders who have loved and protected the liberty of Swedes’. And elsewhere: ‘free peoples have the freedom and right to speak freely, manifestly and to all of their freedom, their rights and precious privileges.’²

But what did ‘liberty’ mean at this time? The term is elusive, as it was used in all political camps. It held a generally positive charge, and was specific and vague at the same time, much like ‘democracy’ is in today’s political parlance. Bo Lindberg, a historian of ideas, has analytically identified four sorts of liberty: religious independence, national independence, constitutional freedom and the due process of law.³

Swedish debate during the 16th and 17th centuries dealt above all with the two former types, or freedom from the Roman Catholic church and from foreign domination. The two latter, more sophisticated discussions were not wholly absent, but did not become central until the 18th century.⁴ Constitutional liberty was won through the 1719 and 1720 instruments of government, which abolished absolutism. The new form of government shifted power to the Council of the Realm, turning it into the country’s de facto government, and to the Riksdag, which developed into a legislative body with control over the rule of the realm. The King had an important symbolic function, but lacked real power.⁵

This form of government grew mainly out of a national constitutional tradition: the founding fathers had studied older Swedish instruments of government and drawn lessons from historical experience. Nonetheless, with its republican flavour – which was strengthened over time – the polity became a singularity, without parallel in earlier forms of rule. One contributing factor to this was that leading personalities began to interpret government in light of contemporary philosophical tendencies, which in turn were inspired by constitutional law from antiquity while also promoting entirely new egalitarian notions. The basis for this shift in outlook was natural law, which reached Sweden by various avenues. Considerable influence was exercised by the German philosopher Samuel von Pufendorf (1632–1694), active in Sweden between 1668 and 1688, and the English
“On the correct use and misuse of books.” The men in the library find benefit and pleasure in reading. In the background, at left, learned men enter through the doors of the academy while at right, objectionable books are burned. The engraver of the Dutch title page, Johannes van den Aveelen, later entered Swedish service and died in Stockholm in 1728. National Library of Sweden.
Enlightenment thinker John Locke (1632–1704), whose second Treatise of Government was published in Swedish translation in 1726 as Oförgripelige tankar om werldsig regerings rätta ursprung, gräntsor och ändamål. A history of freedom of expression and the press is a history of more general social ideas. The notion that each individual has the unlimited right to express his or her views, on subjects that he or she is free to define, is historically contingent. It was really only during the 18th century that this position began to be argued for – for the better part of European history it had been viewed as unreasonable, if it had even been formulated in the first place. In order to understand the extent of the new thinking that was going on at this time, we have to make our way further back through history. The views on politics, society and civil rights that were articulated then would mark Europe for centuries, and differed in fundamental ways from modern views, which are rooted in the 18th century. These differences can be expressed in a number of opposites, of which the most important in this context are duties vs rights, public vs private and religious vs secular.

The classical heritage and Christianity

Europe’s public and learned spheres were dominated from the early Middle Ages until the early 18th century by two systems of thought: Greco-Roman philosophy and Christianity. This is significant for two areas of the history of freedom of expression in particular: the individual’s relationship to the state and the view of the origins of power. From the classical world came the notion that man was a social being whose individual interests were subordinate to the needs of the many, while Christianity’s claim to absolute truth led to a dogmatic theory of knowledge and an authoritarian view of society. Most of our fundamental political terms have been borrowed from antiquity, which can be deceptive as they often denoted something quite different then to what we now intend by them. Being a citizen today implies rights and obligations of legal, political and social character, which can be divided into a public and a private sphere. Ideally, citizenship should be ungraded and apply equally for all. Being a citizen in Classical Greece
(Athens) meant belonging to a privileged caste that afforded the right but also the obligation to take part in the governance of the state. Greek citizenship had developed out of a military reform that made everyone who was involved in the defence of the state party to the governance of it. The duty to participate in politics and the legal system was also a form of defence mechanism if we consider the circumstance that citizens were in the minority compared with women, slaves and free foreigners (*métoikos*). Citizenship eventually became a birthright, only attainable if both parents were of citizen-families. The Athenian citizen is therefore most comparable to a nobleman in an aristocratic republic such as Poland in the 17th century.

Latter-day conceptions of Greek statecraft were shaped primarily by Plato and Aristotle. Their views diverged on many matters, but they agreed that democracy was an imperfect form of government. Both rejected democracy’s arithmetic conception of equality: if all citizens were equally involved in policymaking, the unworthy would have too much, and the deserving too little, influence. They also shared the view that the citizens belonged to the public, and that the whole was more important than the parts in a polity. These arguments became paradigmatic during the Middle Ages, and contributed to legitimising the estates-based form of government that dominated in European polities until the 19th century. Plato’s ideal state presupposed a rational division of labour, and he divided society into three classes – philosophers, warriors and traders – which was subsequently echoed in the three estates system in Europe’s Christian countries: clergy, nobility and commoners.

The fundamental inequality between freemen and slaves remained in the Roman republic, but among free citizens there was a ranking system of hereditary classes which had not, on the whole, existed in the Greek city-states. The fundamental rights and freedoms were the same for all citizens, but some groups of citizens were given advantages over other groups by means of laws of exception. Such laws were called privileges (privilegium, ‘legal provision for an individual’) and endured as a feature of European legal systems into the modern era.

It may be noted parenthetically that Roman public administration included two censors, responsible for population censuses and tax rolls respectively. There was also a *regimen morum*, supervision of public morality. Population registers were also used to make note of crimes against morality and good conduct, or failures in the discharge of public duties, which could lead not only to dishonour but to penal taxation and the loss of office and franchise for the individual singled out. Such monitoring of virtue and morality was an expression of the precedence of public over private needs in Roman society. When the terms *censor* and *censure* reappe-
peared in vocabularies during the Middle Ages it was precisely in the sense of moral vigilance.

With the advent of Christianity, a new norm system came to dominate the Greco-Roman world. A fundamental shift lay in Christianity’s doctrine of a universal and inviolable human value, which had been an unknown concept in the slave societies of antiquity. On the other hand, Christianity was much less tolerant of divergent creeds; polytheistic religions are by their very nature more tolerant than those who know only one God. The Bible became a canonical text, open to interpretation but not to being questioned. Such an absolute standpoint on truth is difficult to reconcile with freedom of opinion. Heretical views can, strictly speaking, only be dealt with in one of two ways: they can be suppressed as subversive or dismissed as irrational. To refute them with arguments from reason is uncalled for when the truth has already been made manifest, and ignoring them has not been ideologically possible as long as religion is regarded as a cornerstone of society’s morality. The dominant role of the church in spiritual and intellectual activities, from the Middle Ages onward, therefore brought with it a far-reaching control of opinions. Because the authorised Christian worldview constituted a totality, and the church was allied at an early stage with worldly power, this control came to embrace scientific, political and moral subjects as well.

Medieval learning, scholasticism, was based on Greek philosophy, originally derived from Plato’s rationalism. From the 13th century Aristotle’s significance grew instead, through Albertus Magnus and Thomas Aquinas. Unlike the Neoplatonists, Thomas saw sensory perceptions as a road to knowledge, but he too believed that God’s existence was an immutable truth which shaped interpretation. If sensory perceptions caused man to doubt, then that was because God’s all-knowing ways were inscrutable.

Thomism brought advances in scientific methodology, but several circumstances – such as medieval teachers and intellectuals being primarily theologians – contributed to their quick transformation into rigid dogmatism when they were applied at Europe’s institutions of learning. Scholasticism sought knowledge from authorities rather than by means of unconditional questions and experiment. While scholasticism did accommodate different views, as a paradigm it formed a holistic system, a whole in which all parts were dependent on each other: theology, natural sciences and social thinking became symbiotic. If one component were disturbed, the others would necessarily be affected.

Since the church regarded itself as holding the keys to true knowledge, it also needed to sanction the dissemination of learning. All copying of text was manual, and each new copy carried the risk of distortion. Transcrip-
tions therefore needed to be inspected, more as a form of quality control than as protection against subversive writings. This is a recurring feature of the history of censorship. A large part – probably the lion’s share – of the reviewing work consisted of tasks which were later to become regarded as editorial work: scrutiny by appointed readers, quality inspections, editing and so on. The typical instance of censorship at universities did not involve discarding entire books or oeuvres. Rather, questionable text passages were compiled in compendia, where they were condemned or refuted; after all, these texts were all intended for learning by, and training of, the servants of the faith. By contrast, the Church acted harshly against popular preachers who taught the mysteries of the faith and tried to explain the Bible to the unschooled populace.\textsuperscript{13}

In around 1450, Johannes Gutenberg of Mainz, Germany, put the final touches to the printing press and the method for the casting and setting of movable type that he had developed together with Johann Fust and Peter Schöffer. It was now possible to produce books that were identical down to the smallest detail, and could be quality-checked at several stages of the process. Movable type made it possible to make trial prints, corrections and reprints until the desired result was achieved. In many ways, this scope for corrections was more important than the speed and volume of book production – both of which undoubtedly increased markedly with the new technology. Typesetting and printing of Gutenberg’s 42-line Bible took more than two years, but in that time period he could produce 180 copies, while a scribe needed three years to produce a single transcription.\textsuperscript{14}

The Gutenberg Bible was, more than anything, a continuation of hand copying by other means. Before printing the Bible, however, Gutenberg had tested using his invention to print smaller items such as calendars, leaflets and letters of indulgence. In this way he introduced a totally new genre, one that would rapidly become significant. Known by collectors today as ephemera, these were various forms of inexpensive, small-format printed matter that could be produced quickly and then distributed widely. Their significance for ordinary people’s reading as well as for propaganda and political opinion making would be considerable over the centuries to follow. It was this type of printed matter, with subversive views and more or less credible rumours dignified by the printed form, which would perhaps primarily cause trouble for those in power. This weed-like subspecies of literature could only be fought with fines, iron collars and fire. The ordinary form of censorship was ineffective against it, since publications of this kind never landed on the censor’s desk.
Censorship

Book production and censorship have gone hand in hand throughout history. During the Middle Ages, censorship was carried out in monasteries and at universities, and was integrated with manuscript-making. The introduction of the printing press brought new opportunities as well as new threats. The first known censorship statute was issued by the University of Cologne in 1479. About twenty locally produced books, published between 1475 and 1483, were examined under this statute. That same year, in 1479, the Archbishop of Würzburg, Rudolf von Scherenberg, began to use approved printed editions of liturgical texts as the basis for the transcribed manuscripts which were still very much in production.\textsuperscript{15} The printed books thus became instruments of standardisation in more ways than one.

In 1485 the Electorate of Mainz, where Gutenberg lived, saw the birth of the first real office of censorship. The art of printing was described as a godsend, but the authorities had not failed to notice that it could also be abused. So in that year Bishop Berthold of Henneberg issued an edict on preliminary review, aimed in particular at translations of church service books. The poverty of the German language would inevitably corrupt the meaning of texts in Latin and Greek, and should such distorted writings end up being read by uneducated men and women, God’s sacred truths might be debased. All translations were therefore to be submitted to a censor.\textsuperscript{16}

Berthold’s decree included two features that have been recurrent in the history of censorship. The first was that it spoke exclusively of the benefit and value of books. Naturally it was more palatable to present the supervision as quality control rather than opinion control, but we must not disregard the circumstance that it often occurred with the best of intentions. This was consumer protection as well as concern for the spiritual well-being of the flock. He who is privy to the eternal truths cannot, with a clear conscience, see fellow men plunge themselves into perdition out of pure ignorance. The second feature was that the edict was imbued with the view that knowledge was not for all men. ‘The dangers of a superficial education’ is a figure of thought that has survived into the modern era. The view was that learning was acquired by means of a dialectical process, and anyone who skipped one of the steps would be stuck with a lot of worthless, or even harmful, quasi-knowledge. In the corporative view of society championed by the Church, moreover, each citizen had a predetermined fate within that society. It was a concept of equilibrium, which assumed that those at the top bore their swords with a purpose, that the cobbler would stick to his last and the farmer continue to toil behind his plough. Knowledge was for the good as long as it was adapted to the individual’s position,
but the wrong kind of knowledge might awaken ambitions that would only lead to personal disappointments and upset the social order.

It is hardly surprising that the Catholic church, as the leading information and knowledge node, was quick to attempt to control book publishing. On 17 November 1487 Pope Innocent VIII issued a censorship edict that claimed to comprehend all of Christianity. A similarly worded bull was issued in 1501, but was limited in its application to Cologne, Mainz, Trier and Magdeburg in Germany. Faced with growing challenges, the Catholic Church convened the Fifth Council of the Lateran, which was held 1511–1517 and produced a series of reform proposals. On 4 May 1515, with the council in session, Pope Leo X issued the Inter sollicitudines bull, which for the first time went beyond religious publications and also banned publications that attacked individuals of high standing. Henceforth all books had to be approved by local bishops and inquisitors, or directly by the Vatican, before they could be printed. In the event of a breach of the ban, the offending books could be confiscated and burned, and the printer threatened with excommunication and fines of up to 100 ducats. Approved books were given an official permit, either approbatio (endorsement) or imprimatur (may be printed). These terms would remain in use for a long time in the printing business. On 15 June 1520, the same Pope issued the even more notorious excommunication bull Exsurge domine, which condemned 41 of Martin Luther’s 95 theses.17 Other than that, the most famous expression of censorship is the Church’s index of forbidden books, Index librorum prohibitorum, which was published in twenty editions between 1559 and 1948.

The monopoly of opinion challenged

In the opposite camp, meanwhile, the art of printing was promptly seized upon by religious dissidents who wanted to reform the church. The medieval life of the mind contained a latent tension between Aristotle’s logic and the mysticism of religion revealed. This was only one of several possible points of attack against the unitary Church with its holistic claims. For his part, Martin Luther considered that a single passage from the Bible contained more wisdom and philosophy than Aristotle’s entire Metaphysics. He rejected the scholastics’ deductive method and regarded the Bible as the only means of guidance to true knowledge. On the other hand, the Scriptures per se were not sacred in his view; true understanding was based instead on interpretation. It was therefore nonsense to claim that the German language would not be
capable of delivering God’s intent to the flock. From this stance, he set
to work in 1521 on translating the Bible into vernacular. This venture
was far from innocuous; rather, as indicated above, it flew in the face of
fundamental notions of society.

The continent of Europe was soon flooded with heretical and subver-
sive printed matter. The Reformation was facilitated by the new medium
and also popularised it. In the course of the revolts and social unrest that
characterised large parts of Europe during the first half of the 16th cen-
tury, the printing press was put to abundant use. Germany, in particular,
can be said periodically to have been in the throes of a media war with
leaflets, pamphlets and printed handbills. It has been estimated that about
2,400 different leaflets were printed in 1524, totalling 2.4 million copies.
A typical example from the German Peasants’ War is what are known as
the Twelve Articles from Memmingen, a sort of catalogue of rights based
on Christian ideas, 25,000 copies of which were printed over just a few
months.

At the Diet of Augsburg in 1530 it was decreed that all printed matter
specify where it had been printed as well as the printer’s name, a regula-
tion that has since become a bibliographic norm and whose connection
to censorship is no longer evident. Licences were issued to printers and
special oaths had been introduced earlier, in which printers and mer-
chants pledged not to deal with forbidden books. The authorities’ fruitless
attempts to stem the tide of undesirable writings was expressed in a decree
issued by the Holy Roman Emperor, Charles V, in 1550:

No one, regardless of his authority or privilege, shall hereafter print or
write, nor transcribe, copy, or, knowingly, keep, receive, store, conceal or
keep secret, sell, acquire, give away, distribute, view, or leave behind in
churches, on streets or in other places, any books or writings by Martin
Luther.

Contrary to their intention, the detailed regulations imply that the edict
was ineffective. With weak central power, controls were hard to maintain.
This was a pattern that would be repeated in other places over the course
of the following century.

Decentralisation promotes opinion-forming

The German publishing market grew vigorously during the 16th and 17th
centuries. Factors contributing to this development included a large pop-
ulation, religious heterogeneity and a decentralised political structure,
which provided room for commercial interests. Censorship in one form
or another existed throughout, but so did loopholes. If a book or pamphlet could not be published in one particular city, or under one particular lord, there was always some other town where things were seen differently.

These conditions were even more prevalent in the Netherlands. In around 1550 there were a hundred or so booksellers and printers in the seven united provinces. A century later, this number had grown to more than 1,300. The Netherlands could pride itself on having Europe’s most permissive climate for the printed word. The reasons are the same as in Germany’s case: decentralised rule, religious diversity and a commercialised market.

After the seven northern provinces of the Netherlands had freed themselves from their Habsburg rulers at the end of the 16th century, a particular political climate arose which was characterised by defiance against authority, religious and linguistic variety, economic prosperity and considerable provincial independence. A vigilant republicanism coupled with a capitalistic culture created a social climate that was unprecedented in the standards of the day. The Calvinists dominated, but never made up more than about 55 per cent of the population, and one historian has described the Netherlands as a society of multiple sects, characterised by pragmatic and inconsistent tolerance. Earlier than in other places, public opinion became a political force to be reckoned with in the Dutch Republic. The Reformation, which brought with it a system of universal secondary schools, together with a relatively high level of urbanisation, contributed to widespread literacy among the population. At the beginning of the 17th century almost two thirds of men and one third of women could write their names, which is a methodological baseline for estimating the degree of literacy.

In literature we can occasionally read that pre-censorship never existed in the Netherlands, but this is incorrect. Local censorship regulations were issued by the provincial governments. In the province of Holland, for example, a decree was issued in 1581 which – in addition to introducing measures against the practice of Catholicism – restricted the activities of printers. This decree, which was renewed and made more stringent in 1585, 1587, 1589 and 1594, prescribed that all printed matter be approved by the authorities. No changes could be made to an approved text, the publication permit was to be printed in the book, a copy was to be submitted for scrutiny, and the name of the author and printer were to be specified along with the place and year of printing. The authorities also introduced a printer’s oath. The same sorts of restrictions that existed in other countries at around the same time, in other words – but it proved harder to apply such restrictions in a confederation of independent provinces. If a
publication was forbidden in one province, the author could easily take his manuscript to a printer in a different province, as the assessment of the text might well be different there. Commercial considerations often trumped political ones. Sometimes printers called attention to the fact that a book had been banned in one province in order to stimulate demand for it in another, or that they expressly sought a ban for the same reason. Each of the seven provinces furthermore guarded their freedoms jealously, and if the joint assembly of the provinces, the States General, banned a publication – which happened less frequently – individual provinces might ignore the ban in order to demonstrate their independence.25

In the mid-1650s the authorities in Holland accepted the consequences of the de facto ineffectiveness of the regulation on pre-censorship. Printers continued to be required to submit copies of their production after it had been printed, but permits were no longer required before printing could begin. The printers’ oath was abolished, but instead bookbinders and booksellers had to vow not to deal with forbidden literature. This new and general regulation was followed by an increasing number of additional ordinances with targeted restrictions – bans ensued on the publication of official documents, heretical statements, libellous publications and so on. The States General replicated the general regulation and recommended, in its own name, that it be adopted by the other provinces. Friesland, however, chose to maintain pre-censorship.26

The United Provinces, and Holland in particular, came to appear – at the time as well as to posterity – as a bulwark of freedom of expression, but as outlined above this was not a view without reservations. Even if tolerance was greater than in many other places, it was not absolute. Above all, it was established by practice rather than in legislation and could therefore be restricted at any time. All the provinces had regulations that restricted freedom of expression, and bans were regularly issued on specific subjects and printed matter, for which indictments could thus be brought retroactively. In other words, there was no guaranteed freedom of the press. Censorship was negligible in history, geography, natural sciences and other areas of learning. Of the books banned by the States General or the provincial governments, more than half were political in nature and just over a third had religious content. When works by philosophers such as Hugo Grotius, Thomas Hobbes and Baruch Spinoza were blacklisted it was because they ventured into either of these areas. Sanctions ranged from fines and confiscation to banishment and corporal punishment. In rare cases, capital punishment was inflicted.27

The Netherlands’ reputation as liberal and tolerant is not due primarily to its domestic book production, but to its production for the foreign
market. Holland in particular became a hothouse of European book production due to its large number of competing, and not too scrupulous, printers. In Amsterdam, controversial literature was printed under alleged publishers’ addresses in Paris, London and Germany. Montesquieu’s *Lettres persanes*, for example, was printed in Holland in 1721, with Cologne as the stated place of printing. Books were smuggled via ports in the Netherlands to distant locations all over Europe, where they supplied local markets with everything from politically radical to pornographic reading matter. Still, even in the Netherlands there were limits, and prohibitions were periodically promulgated against the printing of books that were too outré and therefore could harm the Netherlands’ relations with foreign powers. Temporary publication bans were also sometimes imposed on periodicals during particularly critical phases.

*Paradoxically enough, the history of press freedom, unlike that of censorship, has been more about special interests than principles. The right of every person to express their view openly and without impediment on any matter they choose has not been much defended. Rather, people have defended a market interest or asserted the right to express their own view at the expense of that of others. Censorship, by contrast, has been more based on principle, defending absolute values, which is because it has usually been carried out by those in power, who have been able to back their claims to interpretative privilege with force. With that kind of authority, the ambitions of censorship have extended beyond the suppression of undesirable opinions. Quality control has always been a significant part of official censorship: the information that is spread must be presented correctly. Despite the absolute claims to truth made by both religious and secular authorities, the fundamental premise of censorship has been that very few of those in power have, in fact, had such faith in the force of their convictions that they have dared to have them openly confronted by other views. In a religious society based on authority there is little room for public doubt, and a reasoning attitude is unbefitting, perhaps even subversive. Different powers that be have varied in their sensitivity to different expressions, but in the early modern era religious unity was the aim in all European states. Religion was the *viniculum republicae*, the bond that held society together. Without it, even individual morality was considered an impossibility. When the duty of confession was occasionally eased during the 16th and 17th centuries, this was because of compelling circumstances and not due to conviction. The same can be said about censorship. In the
Netherlands, the boundaries of what was passable were more generously drawn than in other countries, but it was never a matter of manifest tolerance. Still, the Netherlands – and to some extent Germany and Switzerland – did manifest diversity in several areas, and in practice this turned out to promote a more open social climate. The general tendencies of these ways of reasoning were clearly illustrated during the English Revolution of the mid-seventeenth century.

**English pioneers**

The English Revolution 1640–1660 was a response to the autocratic tendencies of Charles I. It was fuelled by religious divisions and led to a more stable position for Parliament, strengthened civil rights, civil war, revolutionary schisms, the execution of the King, a republic, a dictatorship and finally to the restoration of the monarchy. The term ‘English revolution’ is controversial, but is used here because it covers the entire twenty-year period and because our interest reside in the ideas that came to be expressed.

Just as in the revolt in the Netherlands, the English Revolution led to the overthrow of the old order without any new actor being able to take over the reins of power and make immediate claims to authority. The confrontational balance of power that ensued provided room for diverging views on major social issues. Naturally there were monarchists and others who were firmly rooted in the traditional world order. Of particular interest, however, is the republican faction which saw the state as an expression of the popular will and not as a link in a divine chain of command. They made use of terminology lifted from familiar Roman civil law, but the discussion could now move beyond theory and be applied to concrete circumstances. For just a moment during the revolutionary upheaval, great opportunities appeared to open up.30

**Censorship in England**

During the first few years of the revolution, English printing presses could operate pretty much without restrictions. England had had a pre-censorship regime in the same way that other countries had, albeit with the idiosyncrasy that the King had delegated most of the inspection duties to the London printers’ livery company, the Stationers’ Company, which was controlled by the Crown’s special courts, the Star Chamber and the Court of High Commission. The Stationers’ Company issued licences both for
printers and for individual books, thereby regulating the market and exercising censorship at the same time. The Long Parliament, which assembled on 3 November 1640, immediately began to examine miscarriages of justice perpetrated by the royal courts. This led to the abolition, in July 1641, of the Star Chamber and Court of High Commission, and an ensuing vacuum that printers could make the best of. The civil war that broke out in 1642 exacerbated the disarray, and when Parliament attempted to take control the following year, the printers had grown used to their new freedom. Matters were further complicated by the lack of unanimity among those now in power. If the lower house had a printer arrested, the upper house could have him released, and even within the chambers there were conflicting wills.\(^3\)

The Commission that examined the royal miscarriages of justice is interesting because, unusually, it considered the principles in play rather than the factual content of printing cases. It reviewed, among other things, the indictments of four learned authors who had been sentenced to a particularly harsh punishment: they would have their ears cut off and be pilloried in a public place before being jailed for life. When the Commission presented its report to the Lower House, it paid no heed to the contents of the indicted authors’ publications. Instead it focused on the fact that they had been deprived of the fundamental civil rights guaranteed to every English subject under the Magna Carta.\(^3\) Still, its tolerance was far from limitless. When the Commission did go through the books which had been seized by the Star Chamber, they were divided into three categories: good books, which could be sold or returned to their owners, books which could only be sold to select persons, i.e. persons of learning and sound judgement, and superstitious books which ought to be thrown on the bonfire. All Catholic writings belonged to the third category.\(^3\)

It was evident that the interruption to censorship that had occurred would not last. It is a consistent pattern throughout the history of press freedom that unregulated printing presses do not produce literature and debate whose quality and profundity lives up to their advocates’ expectations, but rather to those of their maligners. The idealists have found that authors and the public have not been equal to the faith invested in them, and the pessimists have found their fears confirmed. Almost immediately, Parliament began receiving complaints from individual citizens regarding the many vulgar, subversive and defamatory pamphlets that were pouring out of the printing houses. Printers themselves bemoaned all the illicit prints produced in the unregulated market, to the detriment of their financial interests. When Parliament on 14 June 1643 passed a new Licensing Act, which reinstated pre-censorship, this had been keenly encouraged
by London’s privileged (licensed) printers. Under the new law, they were able to strengthen their control over the book market in several respects.\textsuperscript{34}

**John Milton’s *Areopagitica***

The renewal of pre-censorship provoked the author and Puritan John Milton into writing a speech in defence of an unregulated press. His *Areopagitica* – the name recalled a court of law in ancient Athens – was the most thoroughgoing attack on censorship yet seen, and it would retain that position for a considerable period of time. It was written in the form of a speech before Parliament, but it was never read out in any political forum, nor was it a rejoinder in day-to-day politics. (The oldest known copies are dated November 1644, a year and a half after the introduction of the new printing restrictions.)

The speech opens with a historical review of the ancient Greeks onward. Not unexpectedly, it led to the conclusion that censorship and suppression of opinion were, to all intents and purposes, a papist invention. The speech must primarily be seen in a religious context – Milton also spoke about science and literature, but had hardly anything to say about the formation of political opinion. He expressed himself with a combative righteousness that was typical of a still-struggling Reformation: ‘Who ever knew Truth put to the worse, in a free and open encounter?’\textsuperscript{35}

As long as people were allowed to freely ponder the religious mysteries, Protestantism would infallibly be victorious – but Catholicism fettered human reason. If not everyone can agree, then Milton asked whose view should prevail? It was more rational and more Christian for many to be tolerated than for everyone to be compelled, was his reply. But he drew a line at papism and superstition: ‘I mean not tolerated Popery, and open superstition [...] but those neighbouring differences, or rather indifferences, are what I speak of.’\textsuperscript{36} Thus tolerance extended only to proximate Protestant doctrine. Still, Milton’s distrust of Catholics was defensive rather than confessional. For him, papism was a cuckoo in the nest that would not hesitate to eradicate both competing creeds and secular institutions. Defensive mechanisms were therefore required. Tolerance could not em-
brace the intolerant. Milton’s view was perhaps not equitable, but it was principled.

In any case, the reason *Areopagitica* is remembered today is not its rather verbose diatribes against Catholics, but some cogent arguments and phrases that have continued to resonate throughout later debates about press freedom. A wise person can derive more from a paltry pamphlet than a simple-minded person can from the best and most thorough book. How, then, can a publication do any harm in either case, Milton asked. Or if bad books really did corrupt the mind, how would censors be found who could endure their task? And could you trust censors unless they were the most distinguished of men, with the most excellent knowledge in all areas of learning? For who would want to read a book in which the pupil has corrected the teacher? Most famous, perhaps, is the statement that he who kills a man kills a reasonable creature, but he who destroys a good book kills reason itself.37

Milton did not advocate unlimited freedom of expression; it was pre-censorship he was opposed to. Fighting undesirable ideas with censorship was like shutting the garden gates to keep the crows off the lawn, he wrote aphoristically. Even if, at a pinch, he could accept anonymous authors, his view was that at least the printer must always be named, in order that he might be held responsible for anything that violated morality and general law.38

A revolution in social thinking

Many of the ideas expounded during the English Revolution were clear indications that a fundamental shift was occurring in European social thinking. In order to understand this, we need to go back to the concept of liberty and to the opposites formulated in the introduction. As we have seen, the idea that man, as a social being, was subject to the state, and that the common good always took precedence over the individual’s interests, existed even in antiquity. Beyond the liberties that the state could allow, there was no natural private sphere. It followed from this that man’s relation to the state was about obligations rather than rights. Regardless of whether he was a citizen or a subject, he was at the state’s disposal, and self-sacrificing patriotism was one of the Roman virtues embraced by early modern Europe.39

For the same reasons, religion was a social concern and not a private matter. All traditional power relationships were top-down, and religious truths were not for ordinary folk to ponder, but merely to memorise in appropriate doses. The Reformation brought no change in that respect; the
Aristotelian-Lutheran views that dominated in Sweden during the 16th and 17th centuries, for example, were not less but more dogmatic than earlier doctrines. In the longer term, however, the Reformation delivered a death blow to the old world view since it contributed to breaking up a monolithic system of thinking and showed that several different approaches were possible. Things got really revolutionary when forces within different parts of Christianity began to argue that the small differences that existed between the creeds were less significant than their similarities. This made it less important which doctrines the individual was an adherent of, eventually transforming such distinctions into becoming actually a private matter. This was a long process, but very clearly visible in many places during the 18th century.

All the related phenomena were connected. In a society with a unitary religion and a clear hierarchy between rulers and ruled, and in which individuals were obliged to make sacrifices for the common good, there was no room for freedom of expression. By contrast, a society that regarded religion as the individual’s own business, where power was based on popular consent and where individual freedom and the private sphere were defended, was almost forced to recognise freedom of expression as a fundamental right. A number of processes and structural phenomena contributed to this development: the Reformation, the scientific revolution, a broader world view, economic growth and social mobility, to mention but a few. The pace of these changes varied, but by the 18th century they had together gathered such force that they were well on the way to turning the old social thinking on its head.

This was a subversive movement across a very broad front, and there were only a few clear-sighted observers who saw it coming. During the 18th century, the old and the new were mixed naturally, and it can sometimes be difficult to see the patterns. For example, the French Revolution has long been regarded, in historical consciousness, as the cause and source of many of the century’s radical ideas – when in fact it was a symptom of shifts which had long been taking place right across Europe, including in Sweden. The occurrence of highly radical political changes during the final phase of the Age of Liberty therefore does not mean that there was an exceptional climate of ideas in Sweden. The decisive difference was the republican form of government, which permitted – and more so than in many other places – that the current Enlightenment ideas were actually turned into political reforms. A few examples can serve to illustrate the development of the discussion about censorship and press freedom in 18th-century Europe.
Pre-censorship abolished in England

John Milton’s *Areopagitica* has exerted a lasting influence on the debate about press freedom in Europe, but it had few readers in its own time and did not change any of the circumstances that led to its being written. The pre-censorship that was reinstated by Parliament in 1643 was more far-reaching than before and would, to all intents and purposes, be repeated on several occasions even after the monarchy had been restored in 1660. The law was provisional, and pending a major review it needed to be renewed at regular intervals. When such a renewal was to take place early in 1695, the House of Commons did not approve an extension. The list of reasons that was presented was formulated or influenced by John Locke (circumstances are unclear). He had not yet published his major work, *Two Treatises of Government*, which came out in 1698, but the arguments of the House of Commons were based on principle and natural law: man has certain innate rights that may not be violated, but that was precisely what the existing legislation on printing did. The monopoly corrupted the market and gave the licensed printers the power to appropriate authors’ intellectual property and practise extortion.

In other words, the right being violated was the right to property, not to freedom of expression! This fact made the great British 19th-century historian, Thomas Macaulay, note drily in a famous statement that a reform whose importance for civilisation was greater than that of the Magna Carta and England’s Bill of Rights was fuelled by petit-bourgeois niggardliness, and made without proud rallying cries: ‘They knew not what they were doing, what a revolution they were making.’ At the time it was not regarded as a major event: the same law had been temporarily repealed already, between 1679 and 1685, without social upheaval ensuing. Printing crimes could be curbed by means of the ordinary law and without the help of ineffective pre-censorship, just as John Milton had said. Crimes of blasphemy were addressed with the help of the 1698 Blasphemy Act, incendiary writings were treated as treason, libellous publications prosecuted in defamation cases in the ordinary courts, and so on. In 1737 pre-censorship of all plays to be staged was introduced. One example of political censorship was that it was illegal to write anything critical about the Glorious Revolution of 1688. Cases were brought on these grounds as late as in 1792. Jacobite views – or support for the deposed Stuarts – were regarded as high treason and in 1719 John Matthews, a nineteen-year-old printer, was executed for having printed a leaflet supporting the Stuart pretender, though he was probably ignorant of its content. That would be the last execution...
to be carried out for a printing crime in Great Britain, but such executions had been quite common during the previous century. In 1729 there was a similar case that could have ended the same way, but the accused died in jail before a case had been brought.43

The Acts of Union in 1707 united England and Scotland into one kingdom: Great Britain. Printing restrictions had been less stringent in Scotland than in England, and Edinburgh in particular had a significant printing industry already in the 17th century. After the end of pre-censorship, the English printing industry, which had previously been concentrated to London, also grew considerably. Almost sixty new printing works opened in England during the first half of the 18th century, and expansion was even faster in the second half. London got its first daily newspaper in 1702; thirty years later it had six.44 The British press became a benchmark for all advocates of increased press freedom, not least in France where the printing industry was strictly regulated.

This circumstance was highlighted by David Hume in a famous essay on press freedom, Of the Liberty of the Press, originally published in 1741. ‘Nothing is more apt to surprize a foreigner,’ it began, ‘than the extreme liberty which we enjoy in this country, of communicating whatever we please to the public, and of openly censuring every measure, entered into by the king or his ministers.’45

Such liberty did not exist anywhere else, he continued, either in republics such as Holland and Venice or in monarchies such as France and Spain, raising the question ‘How it happens that Great Britain alone enjoys this peculiar privilege’. The answer was the composite form of government, which mixed the republican and monarchical. These elements controlled one another by means of a scrupulous observance of legal procedure, in which no one could be indicted without a basis in law and no one could be convicted without conclusive evidence. Press freedom was an essential part of this constitutional balance. It brought violations and abuse of power to the knowledge of the general public, which deterred those in power from abusing their authority.46 Although the question already seemed to have been answered, Hume wondered whether this press freedom was detrimental or beneficial. Such a liberty, he declared, is ‘attended with so few inconveniences, that it may be claimed as the common right of mankind’.47
Natural law liberates the citizen

Hume’s essay contained what may be one of the first references to freedom of expression as a human right. Philosophers of natural law in the 17th century had maintained that human beings possessed a set of innate and inviolable rights, but none of them had included freedom of expression on their lists. Samuel von Pufendorf spoke in his compendium *On The Duty of Man and Citizen According to Natrual Law*, printed in Lund in 1673, of every human being’s right to remain silent, and he devoted considerable space to the right to tell untruths. A condition for making use of this right was that the untruth benefited the person telling it but did not violate anyone else’s right. The first condition followed from man’s obligation under natural law to preserve his or her own person. But this right only existed between citizens, and not between the rulers and the ruled: the subject was not entitled to remain silent and tell untruths before those in charge. The converse, however, applied in the same way that parents were allowed to use ‘a dissimulated language and fairy tales with children and their peers, so that they might understand more easily what one means, if they are unable to assimilate the naked truth’. Similarly, it was permissible to ‘draw a veil of invented rumour over state secrets and councils which must not come to the knowledge of others’. The subject, however, was unconditionally obliged to tell the truth to the authorities, in the same way that an accused person before a court had to.

John Locke had even less to say about this. In *A Letter Concerning Toleration* (1689) he argued for religious freedom of conscience. In *An Essay Concerning Human Understanding* (1690, or really 1689) he had pursued detailed studies of linguistic philosophy and observed that language was a prerequisite both for thoughts themselves and for the communication of the same thoughts. But in neither of these nor in his major work of social philosophy, *Two Treatises of Government* (1698), did he attach any importance to the *free* word. The most he had to say about it was on the issue of legislative assemblies. Their independence and function assumed ‘Freedom of debating, and Leisure of perfecting what is for the good of the Society’.

We can see Pufendorf, Locke and Hume as three points along the development of the idea of a citizens’ state. Pufendorf’s view was that man had given up many of his natural liberties by entering into a social contract. Even if man possessed certain immunities that the state could not infringe, the public took precedence over the individual – with the implication that the people had to endure even an unjust governance. While Pufendorf continued to speak of a person’s obligations, Locke concerned himself with
his rights. His view was moreover that the people were entitled to rebel against a ruler who violated its liberties and rights. According to Hume, finally, good society required a balance between rulers and ruled. Absolute democracy threatened to descend into lawlessness, while an absolute monarchy easily turned into tyranny. ‘It has also been found, as the experience of mankind increases, that the people are no such dangerous monster as they have been represented, and that it is in every respect better to guide them, like rational creatures, than to lead or drive them like brute beasts.’ Over two generations, then, a fairly rapid progression had taken place in the view of citizens’ power – and that is a picture which is confirmed by many other sources.

The British press still in check

Hume’s description of British press freedom does not give the whole picture, however. As already mentioned, there were several items of legislation which made it possible to indict publications after the fact. This was particularly insidious in the absence of pre-censorship. When publications were examined beforehand and provided with an imprimatur, this amounted to approval and they were thus protected against prosecution. A publication that lacked an official sanction could, on the other hand, become the subject of legal action – frequently on dubious grounds. This was noticeable above all when it came to immoral literature and political opinion-making. Both of these categories were prosecuted on the basis of common law rather than statutory law, which made judgements open to interpretation as well as influenced by the general social mood. During the revolutionary and Napoleonic wars towards the end of the century, prosecutions of printers increased markedly and new restrictive laws were introduced. An old instrument that was increasingly used was the stamp duty on paper. It was a means with which the authorities could raise the price of newspapers and thus reduce demand among the lower social classes, which were regarded as receptive to revolutionary ideas. The abolition of pre-censorship meant that the burden of proof was shifted from the printers to the authorities, but there was never any question of a fully or even a substantially free press, as the book historian John Feather summarises it. In other words, those in power in Great Britain did not lack means of curbing undesirable political publications. Censorship had been abolished because it did not fulfil its purpose. Those who produced publications that were critical of the Government or seditious had, in any case, not sought the censors’ permission, and if a publication was found to violate the or-
ordinance there were no sanctions specified, so it had to be judged under common law. Attempts were made to replace the old censorship law with new ordinances, and for a brief period the state attempted to try libellous publications under the statute on high treason, but this proved too severe and too complicated for the less serious offences that were typically processed. Instead the law on libellous publication was used. The official term was *Law of Seditious Libel*, which could be interpreted in various ways, and the indictments included everything from defamation to insurrection against the state. Between 1702 and 1791 at least 185 hearings were held for crimes against this law. Far from all of them led to indictments, but that did not always matter. The arbitrariness that was implicit in the law meant that it could be used by political parties to subject opponents to unpleasantness and, not infrequently, to costly legal processes. Above all, the party that was currently in power harassed the opposition in this way. The Government had recourse to a special official, the Messenger of the Press, who monitored the printing houses and could confiscate equipment or destroy type forms. One victim of such political persecution was Nathaniel Mist, a printer who produced several newspapers that were critical of the Government. Between 1716 and 1728 he was the subject of at least fourteen hearings. He was imprisoned, fined and pilloried several times for his publications, and his property was seized. Faced with the threat of lifetime imprisonment, he was finally forced to flee to France in 1728, where he lived in exile until just before his death in 1737. Another well-known victim of opinion persecution was Daniel Defoe, who was also pilloried and jailed on several occasions, purely on account of things he had written. Before the 1760s there were no significant changes to this state of affairs.

It may be argued that it was a step towards increased due process of law that press indictments were processed by courts and not by censors after 1695. When the offence was to do with the position and standing of Parliament, however, the legislators would occasionally undertake measures themselves. This was a clear breach of the principle of division of powers praised by Montesquieu in the idealised account of the British form of government that he gave in his *The Spirit of the Laws* (1748). Nor could such parliamentary judgements be appealed. There was a perception that only Parliament had full freedom of expression and was immune to all infringements of its rights. Backed up by this notion, it was possible to uphold a ban on printing reports of parliamentary proceedings, or even on reporting on its activities. The newspapers’ way of getting around the ban was to report in great detail on parliamentary debates in invented countries, with barely concealed references to British politics, but even this ruse could be the subject of prosecution when it went too far. Montesquieu
summarised the 18th-century conception of freedom in one sentence: Liberty is the right to do whatever the laws permit. But not even in exemplary Great Britain was this liberty guaranteed.

The British debate becomes radicalised

Like so many others, David Hume eventually changed his position on press freedom. The long final argument with which he in 1741 had elevated press freedom to a human right was omitted in the 1770 edition, which was the last one to be published during his lifetime. The four pages were replaced by a single, short paragraph:

> It must however be allowed, that the unbounded liberty of the press, though it be difficult, perhaps impossible, to propose a suitable remedy for it, is one of the evils, attending those mixt forms of government.

The debate about press freedom had been substantially radicalised, and positions polarised, in Great Britain during the 1760s not least due to the influence of the publicist John Wilkes. In his periodical *North Briton*, first published in 1762, he challenged the political restrictions on the press. The position related to constitutional law had previously been about asserting the independence of Parliament vis-à-vis the monarchy. Wilkes and his supporters were fighting to make Parliament accountable to the voters, and they did this by referring to public opinion. Wilkes challenged the secrecy surrounding parliamentary deliberations, printing detailed reports of the discussions in both chambers. An attempt to indict some printers who had violated the ban had to be withdrawn in 1771, following forceful popular protests. The members of both chambers realised that they lacked the necessary coercive measures to uphold the ban, and rather than expose their impotence they chose henceforth to turn a blind eye to the press reports. Still, no formal regulation making it legal to report from Parliament was ever issued.

These developments had many parallels with the situation in Sweden at the same time. In both cases there were powerful forces that wanted to break the corporatist privacy of the legislative assembly and place it under the control of the people. The means to this were increased transparency and an appeal to public opinion. In Great Britain application of the law was softened in practice, just as in 1695, but it was never a matter of any formal concession. The fact that what was resolved by means of altered practice in Great Britain was achieved by means of a constitutional law in Sweden is a reflection of the two countries’ differing constitutional traditions. One consequence of this was that while Parliament accepted that British news-
papers reported on parliamentary debates, the general public did not – as was the case in Sweden after 1766 – have access to its, nor to the Government’s, records of deliberations. In that sense, at least, Gustav III was right when he maintained that ‘press freedom is more extensive in Sweden than in any other country, more so even than in England’, even after he had repealed the 1766 Press Freedom Act.\textsuperscript{63}

France takes the middle ground

As has been shown, free expression did not have an ideal habitat in Great Britain, where conditions did not involve any statutory freedom of writing or of the press. Yet the country was the foremost exemplar in these matters. Most countries practised censorship more or less on the French model. But in France, too, censorship included several features which may appear surprising.

France had an extensive system of royal censors attached to the Direction de la libraire, which, much like the corresponding office in Sweden, reported to central government. But whereas the Swedish censorship office that existed between 1686 and 1766 was held by a single official, in France there were 56 of them in 1700, and their numbers grew to between 122 and 189 during the period from 1750 to 1789.\textsuperscript{64} The censors were learned men with knowledge of the different arts and academic disciplines, and many of them were themselves scientists and writers. A broad range of knowledge was required, since their task was not only to be vigilant of political agitation, but even more to maintain literary and scientific quality. The lion’s share of their work was of the kind which has since been taken over by publishers’ readers and editors.

An officially sanctioned publication was provided with a royal approbation, which could be interpreted as a recognition or even as a recommendation. The standard of the work was therefore a matter which ultimately affected the good name of the king. Another important function was to protect copyright and the financial interests of the printers. Copyright was long something intended for printers rather than authors. In England the printers’ oligopoly had ended in 1695, and new actors began to produce cheap pirate prints of old classics as well as new, original works. The printers who had previously had licences therefore petitioned the government, which in 1709 issued the world’s first copyright law. New books were henceforth protected for fourteen years, and this period could be extended as long as the author was alive. In France, equivalent legislation was not passed until 1777. Before this date the printers were granted privileges re-
regarding original works, normally for a period of ten or twenty years, and
sometimes for longer. During this period it was forbidden for anyone else
to print the same text. Occasionally the censors would protect a subject
instead: if there was already a book that dealt with a certain issue, appro-
blication might be denied to competing books on the same theme.65

French censors were in the habit of carrying out rather extensive edits
of manuscripts. They could then make one of three decisions: they could
ban the book, they could approve it or they could give it what was known
as tacit consent. In the latter case the book did not receive any approbation
(meaning that it lacked legal protection as well as copyright protection),
but censors had turned a blind eye to its shortcomings. Books published
in this way were often furnished with false printing information from
abroad, even if they were printed in France so that their quality shortcom-
ings need not embarrass the Crown, but the income from their sale would
still go to French printers.66

Many of the French censors were themselves enlightened souls who did
what they could to mitigate the system. A famous statement by the former
censor, Chrétien Guillaume de Lamoignon de Malesherbes, pointed out
that a person who read only approved literature would be living intellec-
tually a century behind their times.67 But even if many writers were treat-
ed with a certain benevolence, their work situation was hardly ideal. The
arbitrariness of the French censorship institute was described in deeply
satirical terms by Beaumarchais in The Marriage of Figaro. He wrote:

There has been established in Madrid a system of free trade, which ex-
tends even to a free press, and that, provided I do not write about the
government, or about religion, or politics, or ethics, or people in power
or with influence, or the Opera, or other theatres, or about anybody con-
ected with something, I can print whatever I choose under the supervi-
sion of two or three censors. This sweet liberty I naturally want to make
use of [...].68

A new era

At the beginning of the 18th century, European social thinking main-
tained more or less the same form it had had since late antiquity. It was
a hierarchical, corporative, static view of society motivated by religious
belief. Earthly life had the next life in its sights, society as a whole was more
important than its parts, and the main goal of politics was to maintain the
divinely inspired balance between the corporations. By the time the cen-
tury was approaching its end, this scheme of things and been turned on its
head. Religion was well on its way out of constitutional law, the individual
From seemly subjects to enlightened citizens

was the smallest component part of politics and he possessed a number of self-evident rights that the state could not violate, society was seen as a dynamic entity that was slowly but fairly surely being ennobled and becoming a better place for all its inhabitants. This change can be summarised in a single sentence: subjects were becoming citizens. It was only natural that views on people’s right to information and to express themselves also changed.

How can we explain this sweeping change? The interpretation that has dominated is the one proposed by Jürgen Habermas, the German sociologist. In his dissertation entitled *The Structural Transformation of the Public Sphere* (1962) he attempted to explain how the private sphere arose and was separated from the public sphere. He sees two major structural transformations as decisive: the rise of nation states and the emergence of capitalism. The former brought a professionalisation and regulation of state authority, with clearly defined limits for its interventions. The latter created an autonomous civil society which demanded that governments provide certain services and utilities. The relationship between rulers and ruled was no longer a one-way communication from the top down, but negotiations with demands and counter-demands from both parties.

At the macro level we are concerned with here, Habermas’s interpretation can be accepted without demur, but it needs a historical annotation. The secularisation of constitutional law was a fundamental prerequisite of the changes in social thinking that occurred during the 18th century, and this is never satisfactorily explained by Habermas. It has been pointed out above that in the Aristotelian-Christian (scholastic) world view, religion, science and social thinking formed a whole. If one part were removed, the entire mental structure would soon collapse. The scientific revolution was the first big blow. Piece by piece, Aristotelian natural philosophy was removed, until nothing remained. René Descartes’s mechanistic world view amounted to a challenge that also heralded God’s departure from the natural sciences. Of the greatest significance for the secularisation of constitutional law, however, was natural law theory.

Natural law also originated from antiquity. When the Romans built their empire they came across a number of different norm systems, but certain rules of law appeared to be the same among all peoples. Nowhere was it permitted to steal or murder, marriage between certain blood relations was banned everywhere, and so on. This appeared to reflect an innate or natural conception of justice – which in that case must be of divine origin, it was reasoned. But the Romans were polytheists and pragmatists, and cared little about what gods were being worshipped – one particular religion might be right, but it was not easy for a mortal to know which one.
The intentions of the gods were inscrutable, but they were reflected, and could be observed, in nature and morals. Thus Plato had explained the relationship between the inconceivable world of ideas and its observable shadowplay in the sensible world. The tolerant Romans permitted many local justice systems in their multi-ethnic empire, as long as they did not contradict the shared natural laws.

This tripartite division into God’s law, nature’s law and civil law (positive law) was widely adopted during the 18th century. Natural scientists such as Carl Linnaeus were adherents of what was known as physicotheology, which maintained that God’s plan for the world, while inscrutable, could nonetheless be studied in nature. Lawyers and political scientists likewise said that God’s intentions were inaccessible to human reasoning, but had made an imprint in natural law. As long as civil law corresponded to natural law, it would also be conveyed in concord with God’s will. Thus God could be left out of jurisprudence, which could nonetheless be said to rest firmly on Christian foundations. Considerable effort was instead expended on examining the rules of natural law, and it was these that came to be defined as civil liberties (civil rights) in the 18th century. They included the right to your life and your person, the right to ownership and to improve yourself; sometimes freedom of conscience was also included. To this catalogue of rights were soon added the right to think, speak and write freely.

These were not merely academic theories, they were concrete arguments used in political discussions. Peter Forsskål’s *Tankar om borgerliga friheten* (Thoughts on civil liberty, 1759), one of the clearest expositions of natural law in Sweden (see Ere Nokkala’s contribution), reveals even in its title its dependence on this tradition of thought. Arguments from natural law had been important in the formulation of the 1720 Instrument of Government, and they continued to ring like a keynote throughout the Age of Liberty. Writers such as Johan Fredrik Kryger, Anders Schönberg, Forsskål as mentioned and above all Anders Nordencrentz, had been arguing for several decades in favour of easing censorship, and as early as in 1739 Henning Adolf Gyllenborg, a secretary of state, had argued before the Riksdag that a ‘free people should be permitted a free press’.
the 1766 order on the freedom of the press was drawn up, it was done after long, ideological and opinion-forming preparation.

In this respect, circumstances contrasted sharply with those in Denmark, which would be the second country to introduce statutory press freedom. Constitutionally, Denmark had the most rigid autocracy in Europe, and the printed word was under full royal control. The country was therefore unprepared when Johann Friedrich Struensee, in his first cabinet order, introduced unlimited press freedom on 4 September 1770. Struensee was the personal physician of the mentally unstable Christian VII, and was for sixteen months the de facto ruler of Denmark in his name. Struensee was a radical man of the Enlightenment, inspired by the Dutch ‘arch-heretic’, Baruch Spinoza, and he wanted to turn Denmark into an enlightened model state.73

Even if Denmark was a strict autocracy, it was not unaffected by the intellectual currents of the time. Jens Arup Seip, a Norwegian historian, has written an influential essay about the development of an ‘opinion-ruled autocracy’ that demonstrated responsiveness to public expressions of opinion. This description has recently been questioned in a thorough study by Øystein Rian, whose view is that the connection really went the other way: public opinion appealed to the goodwill of the monarchy as a form of invocation. Danish absolutism fed a self-censorship so strong, Rian argues, that it is best likened to brainwashing: it was only by demonstrating due subservience that a writer could take part in the public discourse.74 In accordance with the arguments in this outline, it may in any event be noted that Denmark did not escape the influence of the radical ideas that were sweeping across Europe even before the French Revolution.

Struensee’s unlimited press freedom did not last long. After a tentative beginning, publication of small-format printed matter in particular increased sharply towards the end of 1770. A large share of these pamphlets were published anonymously, and from having initially praised Struensee’s reforms they soon turned increasingly critical of his person as well as his policies. On 7 October 1771, a royal decree was issued that once again made writers and printers responsible for their publications. Lampoons and seditious publications would henceforth be tried under common law, which in practice meant that violators of the press laws could be sentenced to death. Struensee was deposed on 17 January 1772, and the new regime imposed further restrictions on press freedom. When political publications were banned on 20 October 1773, the party was irrevocably over. Control of publications then lurched back and forth, with periodically very strict legislation, until Grundloven (the constitution) of 1849 and the press law of 1851, which set the printed word free.75
Subsequent examples of manifest press freedom came from the United States and France, and were in both cases the consequence of revolutionary upheaval followed by declarations of rights. The United States declared its independence from Great Britain in 1776 and adopted a new constitution in the spring of 1788. Freedom of the press and of expression were not mentioned in either of these documents, but were presented in a Bill of Rights that was adopted by Congress in September 1789 and ratified by the states in December 1791. The first amendment forbade Congress from adopting any law ‘abridging the freedom of speech, or of the press’. In France, the corresponding freedom was included as Article 11 of the Declaration of the Rights of Man and of the Citizen that was adopted by the National Constituent Assembly in August 1789. ‘The free communication of thoughts and of opinions is one of the most precious rights of man’, Article 11 stated. ‘Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by law.’

This freedom which, at the beginning of the 18th century, was not known in any country had, towards the end of the century, come to be regarded by many as a fundamental human right. Poland introduced a law on freedom of expression in 1775, and in 1791 enshrined in its constitution a short-lived freedom of the press. Even in autocratic states such as Prussia and Austria censorship was cautiously eased, but the arbitrariness of its application remained. It took a revolutionary transformation, or a form of government in which citizens had already been granted an active role, to turn fashionable philosophy into practical policy. In many places the revolutionary and Napoleonic wars brought a temporary setback in the fight for freedom of expression, but in the Europe of new constitutions that followed on the Congress of Vienna in 1815, press freedom was an increasingly self-evident reality.

The road to press freedom and to the free formation of opinions was still a long one in most countries, to be sure, but these freedoms had now become an issue that those in power needed to engage actively with. Previously, the right of rulers to control the mental and spiritual life of the ruled had been taken for granted, and required no justification. This was no longer the case.
Notes

2 En Årlig Svensk 1755, pp. 269, 57.
4 Nordin 2006.
5 Nordin 2003; Nordin 2009, pp. 25–58.
6 This should really also include notions of freedom of movement, freedom of assembly, freedom of association etc. These freedoms have often developed parallel with freedom of expression and of the press, but this brief overview does not provide scope for exploring them.
8 The Polish Parliament’s famous vox liber was a given for free Poles, i.e. the aristocrats, but hardly for ordinary subjects; Grześkowiak-Krwawicz 1997, pp. 102 ff.
11 Sundén 1925, pp. 112–114.
16 Kawohl 2008.
18 Mullett 2004, pp. 54 f., 62 f., 137.
19 Czaika 2014, pp. 78 f.
21 Harline 1987, pp. 72 ff., 22
26 Groenveld 1987, pp. 71–73.
29 Groenveld 1987, p. 72.
35 Milton 1959 [1644], p. 561. The Spelling has been modernized in all quotes from this work.
37 Milton 1959 [1644], pp. 492, 520 f., 530–534. Milton embedded the statement in a religious context: man, the reasonable creature, is an image of God; to kill reason is to kill the image of God. Hence: if you kill reason, you kill the divine in man.
38 Milton 1959 [1644], pp. 520, 569.
40 Worden 1987, pp. 45 ff. One example of the long-term impact of Areopagitica is the paraphrase by Mirabeau, the French revolutionary politician: Sur la liberté de la presse, imité de l’anglois de Milton, from 1788, reprinted 1789 and 1792.
42 Macaulay 1855, p. 541.
44 Colley 1994, pp. 40–42.
47 Hume 1987 [1741], p. 604.
50 Locke 1690, Book III.
51 Locke 1988 [1698], II:215.
52 Pufendorf 1991 [1673], II:XVIII.
53 Locke 1988 [1698], II:226–228.
54 Hume 1987 [1741–1770], pp. 604 f.
57 Hamburger 1985, pp. 724 f.
58 Chapman 2014.
59 Thomas 1969, pp. 44–47.
63 Gustav III writing to Voltaire in May 1774, after Proschwitz 1992, p. 145. There is no evidence that the letter was actually sent.
64 Birn 2012, pp. 3, 12.
68 Beaumarchais 1991, pp. 139 f. [English translation as quoted in Book History – Ezra Greenspan, Jonathan Rose – Google Books, p. 271]. The play was written in 1778, but only had its first performance in 1784.
69 Voltaire 2015 [1763] follows this line of argument throughout.
70 John Locke was possibly the first to argue for a separation of the religious and political spheres: Locke 1689, p. 6.
71 Nordin 2003, pp. 63 f.; Nordin 2009, pp. 27, 85 f.
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73 Laursen 1998; Laursen 2000; Horstbøll 2005; Amdisen 2012, pp. 147–150. Langen 2008 p. 323 claims that it was Christian VII who was personally behind press freedom. This view has scant support among other researchers.

74 Seip 1958; Rian 2014, pp. 40–42, on self-censorship e.g. pp. 15, 51, 169. The gist of Seip’s argument had already been put by Edvard Holm in 1888. He also published a classic study of Danish press freedom: Holm 1885.


I cannot and should not think of being a limb in such an unhappy kingdom where one could not once be allowed to say what freedom is; not be allowed to wish that each and every one may have leave, according to their conscience and conviction, to offer their best advice for the benefit of society in common.¹

There are two alternatives for refusing the harmful consequences of dissatisfaction: one requires ink, the other requires blood. If those who are dissatisfied are allowed to express themselves freely, they could be refuted, be informed, and turned into an enlightened Public.²

Sweden’s Freedom of the Press Act of 1766 was preceded by a heated debate in the diet of 1765–1766. Anders Chydenius acted as the foremost defender of the freedom to write during the diet session. The demand for unlimited freedom to write, however, had already been put forward in Sweden a few years earlier in 1759, when Peter Forsskål (1732–1763), also born in Finland, authored and published a clear, concise pamphlet on civil freedoms in Swedish. Chydenius and his sympathisers must have known about Forsskål’s pamphlet and the battle he fought for it. In his 1759 pamphlet Tankar om borgerliga friheten (Thoughts on Civil Liberty), Forsskål defends the thesis that limited government and unlimited freedom to write are absolute preconditions for civil liberty. It is not only Forsskål’s courageous pamphlet that makes his activity exceptional, but also his rhetorically dexterous way of defending his opinions and his demands that his opponents justify their standpoints.³

Forsskål’s role as defender of the freedom to write lay long forgotten, and he has only been named occasionally in historical writings. Over the last few years, however, a growing interest in Forsskål’s thoughts and output has been noted.⁴ His life was extremely full of variety, and his successes were absolutely not limited to his defence of civil liberty. Peter Forsskål began his academic endeavours as a theologian and philosopher. He is
Peter Forsskål, orientalist and botanist, was an early advocate of the freedom of the press and freedom to write. Painting from approximately 1760 in Salnecke, Uppland. Artist unknown. The Swedish National Museum. Photo: Uppsala University art collections.
known as one of Linnaeus’s most gifted students. He was one of the men known as Linnaeus’s apostles. Forsskål was an orientalist and botanist; he compiled a large collection of plants, fish, medicines and minerals, and made important notes as a member of a Danish expedition via Malta and Egypt to the south of the Arabian Peninsula (Arabia Felix). For example, he collected a total of 565 medicinal substances. The medicinal plant Coleus forskohlii (Plectranthus barbatus) was later named for him. Linnaeus named a nettle (Forsskaolea tenacissima) after Forsskål, presumably inspired by the latter’s well-known stubbornness.

The multifaceted Forsskål may, with good reason, be regarded not only as a botanist and natural historian, but also as a philologist. His successes in Arabic lexicography are regarded as particularly significant. Recently, Forsskål’s inheritance as a political thinker has been re-examined, and he has been expressly mentioned as an early advocate of the freedom to write and the Principle of Public Access to Official Documents in the administration of a country.

Forsskål’s oeuvre helps to provide an overall picture of the Swedish Enlightenment in many ways. It is therefore hardly surprising that researchers of the Enlightenment have noticed him. Vesa Oittinen believes that if – inspired by Jonathan Israel – the Enlightenment philosophers are divided into moderates and radicals, there is good reason to place Forsskål among the radicals owing to his ideas on freedom and his demands for political and social reform. Israel himself has recently observed that there are signs of radicalism in Forsskål’s thinking, even if the Enlightenment tradition that prevailed in Sweden on the whole was moderate. Oittinen’s and Israel’s standpoint is thereby linked to the more extensive debate on the Enlightenment in Sweden and in Europe more broadly.

Researchers studying the eighteenth century have debated the character of the Age of Liberty, and whether in general there was any Enlightenment in Sweden to speak of. Tore Frängsmyr has provocatively asserted that Sweden completely lacked any kind of authentic Enlightenment of the French type, in which hostility to religion and an emphasis on reason, science and secularisation were moved into focus. Frängsmyr has been criticised – with reason – for his concept of the Enlightenment being entirely too narrow. Several countries and regions can be considered as having had their own Enlightenment that was related to the broader Enlightenment movement through certain family resemblances. The anti-religious, atheistic Enlightenment current was missing in Sweden, but the ideas of progress through reason and education were the subjects of continuous discussion. At the same time, belief in the possibilities of science and the benefits it generated was strong. In my opinion, Forsskål’s radicalism was relative,
and many of his thoughts were already well-known in a broader Enlightenment context. What made Forsskål’s thoughts unique is that he put them forward in Sweden without caring about censorship or political opposition.

The figure of Forsskål is associated with another central issue that has occupied research into the eighteenth century. Petri Karonen has asserted that the era of the rule of the estates would be a more pertinent term to describe the real character of the Age of Liberty. Even though the sciences bloomed during the Age of Liberty, even though the power of the King was curtailed, even though certain freedoms such as the Freedom of the Press Act of 1766 were finally achieved, continuous violations of the security of life and property on the part of the estates and the ruthless subjugation of the opposition through measures such as censorship still cast a shadow over the period.13 My intent is not to repeat Gustav III’s exceedingly influential and rhetorically dexterous interpretation of the Age of Liberty as in fact a period of aristocratic despotism.14 Forsskål’sTankar om borgerliga friheten still tellingly reflects the social and political problems of the Age of Liberty and challenges orthodox ideas on the Constitution and trade policy. Forsskål does not mention at all in his pamphlet that it was written in protest against the ruling Hat Party, but this was already the prevailing contemporary interpretation and his biography makes this interpretation credible. In his defence, Forsskål mentions that there is a risk that Sweden was on the way to following the example of the Italian city-states and becoming an aristocracy:

Our freedom has not yet reached so far that it could not degenerate into a noxious aristocracy. But, however, it seems to me that in the future, self-interest among the most powerful will find room enough to hurl our country into it, when all the business of those who rule can be defended with their own highest power.15

In order to be able to understand Forsskål’s thought and his pamphletTankar om borgerliga friheten, there is reason to examine the stages of his life and path of study in more detail. Peter Forsskål was born into a clergyman’s family in Helsinki in 1732. His father was Vicar Johan Forsskål (1691–1762), known for his learning and reading.16 Peter was only ten years of age
when he began studying at Uppsala University. At that time, approximately 30 percent of the students at Uppsala University were under the age of 15, so Forsskål’s early entry into an academic career was not entirely unusual. Forsskål’s first period of study lasted only a couple of years. He most likely spent 1744 to 1750 apprenticed to his father in Tegelsmora. Young Peter’s aim was later to enter the service of the Church, like his father, and thus he studied Hebrew, Latin, Greek, philosophy and theology. In 1751, he returned to Uppsala and began diligently attending Linnaeus’s lectures. Linnaeus was undeniably a scientist who influenced Forsskål’s life to a great degree, and Forsskål paid ever greater attention to the natural sciences. He received the Guthermuth Scholarship; study abroad was one of the conditions for the scholarship, so he left for Göttingen, apprenticed to the well-known theologian, botanist and orientalist Johann David Michaelis (1717–1791).

Under Michaelis’s guidance, Forsskål studied theology, languages, and – to an ever-greater extent – philosophy. He still occupied himself with research into nature and collected things such as butterflies in the fields in the neighbourhood of Göttingen along with his friends.

Forsskål’s years of study in Göttingen, from 1753 to 1756, were the most important period of his life as regards the formation of his philosophical and political thinking. He devoted this period to developing his fundamental philosophical principles – the idea of the unshakeable rights of all people, and his admiration of England and its freedom of expression. During the time of Forsskål’s visit, Göttingen – with its relatively newly founded university – was on the point of taking the place of Halle as the most progressive centre for the Enlightenment in Germany. Göttingen was located in Hanover which, through a personal union, was connected with England. Anglo-Saxon culture played an important role in “Leine-Athen”, which can be revealed in the fact, for example, that Scottish philosophers such as David Hume were popular. Hume’s output was diligently translated into German, and Forsskål seems to have been well acquainted with these translations. Admiration for the English form of government, after Montesquieu’s treatment of it in *The Spirit of the Laws*, had spread among the scholars of natural law in Göttingen. Among the most prominent of these were Johann Christoph Claproth (1715–1748), Johann Jacob Schmauss (1690–1757), Gottfried Achenwall (1719–1772) and Johann Heinrich Gottlob von Justi (1717–1771). These scholars of natural law were united through a common adversary. They all were opposed, namely, to Christian Wolff (1679–1754). Wolff is regarded as the most central figure of the German-speaking Enlightenment before Immanuel Kant (1724–1804), and was extremely influential in his time. Wolfianism was the leading philosophy of Swedish universities well into the second half of
the eighteenth century. In Germany, Wolffianism began to be opposed in Göttingen, where pamphlets criticising Wolff had been published since the 1740s. Forsskål, through his dissertation on philosophy, *Dubia de principiis philosophiae recentioris* (Doubts Concerning the Principles of the Newer Philosophy, 1756), links straight through to the anti-Wolffian current prevailing in Göttingen. Achenwall was one of the scholars of natural law who reviewed Forsskål’s dissertation. The title of the work expressly refers to the rationalist and metaphysical philosophical direction that Wolff supported. Forsskål questions Wolff’s ‘principle of sufficient reason’ and ‘principle of contradiction’. His dissertation places emphasis on the empirical when he stresses the importance of experience-based thinking.

Empiricism and practical applications are of crucial importance in Forsskål’s philosophy. He wants to make a sharp distinction between himself and the dry, metaphysical Wolffians. In research, less attention has been directed towards the observations regarding natural law in Forsskål’s dissertation than towards his viewpoints on the epistemology. His *Tankar om borgerliga friheten*, however, is based on this thinking regarding natural law. In the centre of Forsskål’s philosophy of natural law stands the right (*ius*), in the meaning of moral ability, and in the meaning of an unshakable right that belongs to everyone. This standpoint, which Forsskål formulated in his dissertation, forms the background assumption for his later publications. Forsskål asserted that he wrote his dissertation because he was concerned about human freedom. He was afraid that Wolff’s principle of sufficient reason and principle of contradiction would lead to fatalism and determinism that threatened freedom. On the subject of social rights as Civil Liberties, see Jonas Nordin’s contribution in this volume.

Forsskål’s dissertation received a good reception in Germany, and it caused a lively debate, both for and against. One particularly positive review was published on 22 July 1756 in the journal *Göttingische Anzeigen von gelehrten Sachen*, even if it was most likely written either by Michaelis or one of his students. One piece of evidence of the free atmosphere prevailing in Göttingen is also that, in his dissertation, Forsskål criticised his tutors as well – Michaelis and Samuel Christian Hollman (1696–1787), who had no objections to him doing so.

When Forsskål returned to Sweden in 1756, he did not meet with a warm reception. He wrote that he wanted to devote himself to the oeconomy, which he regarded as a free and beneficial science. He studied chemistry – above all, agriculture – and wrote the dissertation *De Pratis conserendi* (On Cultivating Meadows) in his ambition to gain a position as an adjunct professor in oeconomics. The professor of *oeconomiae, jurisprudentia et commercium* was the essentially Wolffian-oriented mercantilist
Anders Berch (1711–1774), who felt that Forsskål was not qualified enough for the position. Berch was also a dedicated Hat politician, and his support for the Hats’ protectionist trade policy was unshakable. Forsskål’s criticism of Wolffianism was thus not welcome at Sweden’s Wolffian-oriented university.

In particular, the leading Wolffian figure Nils Wallerius (1706–1764) issued propaganda against Forsskål. Forsskål, for his part, often used epithets linked to Wolff about Wallerius. He thought Wallerius was dry and metaphysical. According to Forsskål’s interpretation, Wallerius’s attacks only gave him new friends and defenders among people who dared to think for themselves. Forsskål did not attack Berch in similarly drastic turns of phrase, but he was not given the right to defend his dissertation in oeconomicus, nor did he obtain the adjunct position he sought; it went to Berch’s favourite, Pehr Niclas Christiernin (1725–1799).

Forsskål did not let himself be discouraged by his misfortunes, but reported to the Faculty of Philosophy that he wanted to print a dissertation on civil liberty: *De libertate civili*. The step from the subject of soil cultivation to the subject of civil liberty may seem a big one to today’s readers. Forsskål was not exceptional for his time, however. The lack of civil liberty,
according to Forsskål, made scientific and economic advances impossible. Economic and political standpoints were thus, in Forsskål’s thinking, intimately connected to each other in a fashion typical of the times.

_De libertate civili_ was written in both Latin and Swedish in the form of _Tankar om borgerliga friheten_, which was exceptional. Only in economics had dissertations previously been written in Swedish. The faculty refused Forsskål the right to print his dissertation, and he received no support from the Chancery Board, the responsible organ for censorship, whom he approached to appeal the faculty’s decision. After that, Forsskål made a courageous move and applied to the censor for permission to print his pamphlet, which he also received after the introduction of a few changes that the final censor, Niclas von Oelreich (1699–1770) demanded. Forsskål was fully aware that his pamphlet would be confiscated. He therefore collected all 500 printed examples of the book at Lars Salvius’s printing house the day they were printed. The Chancery Board whose officials were Hats, assembled the same day and demanded that Forsskål’s pamphlet be confiscated. At first they did not wish to create a stir with a formal bar. As Rector, Linnaeus was responsible for confiscating Forsskål’s pamphlets in Uppsala. Of the 500 copies printed, only 79 were successfully confiscated – two of them in Finland. Linnaeus was also compelled to confiscate the two copies he had obtained from Forsskål. The Council of the Realm (the Government) forbade the pamphlet with an official proclamation of 28 February 1760.

According to the Government, Forsskål’s pamphlet contained unreasonable theses; open and secret sale, purchase, or possession of Forsskål’s pamphlet were therefore prohibited.

Later, Forsskål wrote tellingly that the prohibition against his pamphlet only made it more in demand and read more widely. In 1769, Nordenkrantz supported Forsskål’s interpretation by asserting:

- It is known that the dissertation was forbidden on pain of a fine of 1,000 dalers in silver coin, and was nevertheless found in several places and was read with greater demand than if it had never been prohibited and at last completely disappeared.
1 000 dalers was nearly equivalent to two years’ wages for a sea captain. It is therefore not surprising that there are no references to Forsskål and his pamphlet between 1760 and 1766, the year the first act on freedom of the press entered into force.

During his brief career, Forsskål challenged the orthodoxy prevailing in Swedish universities: Wolffianism. In *Tankar om borgerliga friheten*, he challenged political orthodoxy. The subject of his criticism was the Hats, the political party in power. A sign of Forsskål’s inclination towards the Caps movement was the position of tutor he obtained when he settled in Sweden in 1756. He came to the house of Johan Ihre (1707–1780), and it was no secret that Ihre was a Cap. Ihre had his own experiences with the power of censorship. In 1750 he was sentenced to the loss of one year of a professor’s stipend since he had supervised dissertations in which harmful opinions and theories had appeared. Harmful theories were primarily theories that did not support the Hats’ interpretation of the constitution and of freedom. Michaelis – who considered himself as having directly influenced Forsskål’s conception of freedom and opinions on political issues – wrote that Forsskål had his pamphlet defending the freedom to write printed as a measure against the ruling Hat party.

Forsskål’s starting point in natural law in *Tankar om borgerliga friheten* was that every person is originally free, and that people’s freedom should not be unnecessarily curtailed. Freedom should only be deprived of its detrimental part (*licentia*) and be allowed to retain its advantageous side (*libertas*). In practice, the necessity of the state is justified in this way. Each of us must be allowed to live in safety, to obey our conscience, to use our possessions and to contribute to the prosperity of society. After having defined the concept of freedom, Forsskål explains the nature of civil liberty and the dangers that afflict it. When Forsskål discusses what is more destructive: to be subject to the arbitrariness of an autocratic ruler or to be oppressed by other subjects, he is undeniably commenting on the situation that prevailed in Sweden.

In order for us to be able to understand Forsskål’s concept of freedom, we must acquaint ourselves with the interpretation of freedom that the Hat Party supported. During the Age of Liberty in Sweden freedom had, above all, been defined as freedom from sovereignty, which was understood as freedom from the autocracy of the ruler. The Hat Party’s constitutional interpretation is found in its clearest form in the first political periodical in Sweden, called *En Ärlig Swensk* (An Honest Swede), from 1755 to 1756 – a periodical that was strongly associated with the Hats. According to *En Ärlig Swensk*, the Swedish constitution guaranteed the freedom of the Kingdom in the same way the Bible, as the word of God, liberated us from...
the predominance of Satan. The Constitution was thus regarded as a document similar to the Holy Scripture, liberating us from the arbitrariness of an autocratic tyrant. The members of the Hat Party were not interested in a broader debate about the Constitution, but only in increasing support for their own interpretation. According to En Ärlig Swensk, however, there is always someone who does not understand the message of the Constitution, and finds contradictions in it in the same way as there are those who question the text of the Bible. Forsskål’s aim was a broader political debate, and social reforms.

Forsskål shared the Hats’ opinion on the danger of autocracy when he wrote that liberation from autocracy is an important step towards civil liberty, but continued, “Because the total freedom of a society is not constituted by its subjects being safe from their Ruler’s violence. It is a big step and the first towards general happiness. However, subjects can also be oppressed by each other.” Forsskål reflects on whether the superiority of a ruler or the superiority of the citizens is more dangerous:

Were anyone to ask whose superior power would be most unfortunate for a country – the Ruler’s or the citizens? I believe the latter is more insufferable, but the former more incurable, and therefore that one should avoid and shudder at the former the most. Because, if it is not removed, the other can never be removed.

It is harder to get rid of autocracy, but Forsskål felt that the latter – that is, the situation that prevailed in Sweden – was simply intolerable. Forsskål was certainly directing his criticism towards the Hats who, thanks to their position and their riches, could continue in their abuses. In addition, they could increase their power on a continuous basis. Forsskål refers to how those in power govern Sweden arbitrarily and how privileges favour the Nobility. His opinion that Sweden was developing into an aristocracy is also linked to this.

For all that, the picture Forsskål paints of the situation in Sweden is not as dismal as it seems at first glance. Sweden had already taken the most difficult step – that is, getting rid of the superiority of the autocratic ruler – by 1719 and 1720. Forsskål brought up that autocracy and freedom to write are mutually exclusive. He was also hopeful regarding Sweden’s future when he stated that it was possible to be free of the superiority of the fellow citizens, if only the injustices with which they occupy themselves were revealed. Freedom of the press contributed to revealing injustices, and could show how individual groups act against the common good.

Their only protection is to hide the injustice they exercise. But it cannot be hidden for long if, in public writings, each and everyone is allowed to speak out about what is being done against the best interests of the public.
Finally, it is also an important right in a free society to be freely allowed to contribute to society’s well-being. However, if that is to occur, it must be possible for society’s state of affairs to become known to everyone, and it must be possible for everyone to speak his mind freely about it. Where this is lacking, liberty is not worth its name. Matters of war and some foreign negotiations need to be concealed for some time and not become known by many, but not on account of proper citizens however, but because of the enemies. Forsskål’s thought was thus foreshadowing the Principle of Public Access to Official Documents. Public access should apply as a main rule, and secrecy as the exception. It can be assumed that Forsskål’s intent was above all to reveal corruption among the Hats. ‘The public’ had the right to know what was going on in diet in order to control those who held power and contribute to the general well-being.

Forsskål’s main thesis was that civil liberty is based on limited Government and unlimited freedom to write. He stated that not even divine revelations, rational constitutions or the honour of individuals could suffer from the freedom to write – that is, they are not harmed by their being discussed. He believed that if people could freely discuss for and against things, the most rational standpoint and the truth would ultimately win. Forsskål’s aim was the creation of a broader public that read and discussed. The model for him here was England. According to Forsskål, the fundamental laws were continually under improvement in England, where they could be discussed freely. When the public is allowed to express its dissatisfaction, the unsatisfactory state of affairs is corrected over time. Forsskål uses a strong metaphor, writing that it is to the great advantage of the state if people can express their dissatisfaction with the pen instead of being forced to resort to weaponry. Frustration can be given its release in some other manner than through violence. Forsskål emphasised that decision-making should be open:

On the other hand, when the whole country is known, at least the observant do see what benefits or harms, and disclose it to everybody, where there is freedom of the written word. Only then, can public deliberations be steered by truth and love for the fatherland, on whose common weal each and everyone depends.

There was also a broad social aspect to the reforms Forsskål requested. He demanded the inviolability of private property, impartial division of land, and tax reform so that no one would be forced to suffer under unreasonable tax duties. He proposed a civil service examination for civil servants, and mentioned China as an example here – a thought that recurs in Nordencrantz and Chydenius. Forsskål demanded the right to appeal court verdicts. In addition, he demanded freedom of trade, that the character of
trade guilds be reformed, and the right to teach at universities in the way that was considered best. He had undoubtedly imbibed influences from Göttingen in these reform ideas.

Among German authors – just as in Enlightenment Europe to a greater extent – admiration for China was widespread. Justi wrote that in China, success was dependent upon merit and not the position held at birth. Justi and Forsskål certainly shared similar views when they both emphasised that success in a civil service career must be based on ability and not on fortune or ancestry. Both also had their own experiences of the matter, and the situation in Forsskål’s life was quite dire. His opportunities for advancement in Sweden had been obstructed time and time again. The absence of social advancement, however, was a greater societal problem than that which concerned Forsskål’s own life. Demands for upward social advancement in the Kingdom were considerable. At the same time, the privileges of the Nobility stopped the careers of those who were not blue-bloods. The reference to Germany as regards the freedom of science and of education is also inspired by Forsskål’s experiences in Göttingen. At the University of Göttingen, the teachers were in principle allowed to freely choose what they taught, and the theological department had no right of precensorship. When Forsskål praised Germany, he actually meant Hanover and Göttingen.

Forsskål wrote in a letter to Michaelis that thanks to his pamphlet, he was known in Sweden as an honest patriot. He defended his opinions in an unusually courageous manner and justified them in a complicated process where he was repeatedly questioned by the Chancery Board. He demanded that the decision to confiscate and then forbid his pamphlet be justified, and that he should also be given the opportunity to acquaint himself with extracts from the records of the Chancery Board. He emphasised:

I demand nothing other than wholesome, proper freedom. Should such a demand be against the Swedish form of government, as the Chancery Board alleges my pamphlet to be, so it would only follow that there is no freedom here.

[– – –] as I have only described freedom: and such a pamphlet served to make the form of government mistrusted and odious, and therefore should be suppressed and forbidden. [– – –] On my part, I can see no way of making the Government more mistrusted than that.

Forsskål’s courage could very well have been due to the fact that, on the recommendation of Linnaeus and Michaelis, he had at that stage already been accepted as one of six members of a Danish Arabia expedition (1761–67). He had found it difficult to gain his father’s permission, since the latter was
afraid of the dangers that this kind of journey would entail. In June 1759, Forsskål obtained his father’s blessing for the journey. He was appointed a member of the expedition and a Professor in Denmark. In connection with his appointment as Professor, Forsskål’s dissertations from Göttingen and Uppsala were re-published in Copenhagen with a new foreword in 1760, which provides another indication that his freedom pamphlets Dubia and Tankar belonged together.\(^5\)

In 1761, Forsskål left on the expedition. Of the six members of the expedition, only one – Carsten Niebuhr (1733–1815) – returned home alive. He edited Forsskål’s notes and made them known among the general public. Forsskål died in 1763 at the age of 31, of a fever-related illness in what is now Yemen.

Finnish-born Peter Forsskål was registered in Uppsala University at the age of ten and later became a disciple of Linnaeus. Painting View of Uppsala with the Cathedral, Elias Martin, 1784. Uppsala University. Photo: Uppsala University art collections.
In my opinion, Forsskål was not a revolutionary but he demanded serious reforms that he considered necessary with a view to Sweden’s political and economic future. The context of Forsskål’s pamphlet is the political situation that prevailed in Sweden. One special feature in the Freedom of the Press Act is that it contains the idea of public access to administrative documents. Marie-Christine Skuncke is of the opinion that this is a significant contribution to the political culture of eighteenth-century Europe that has been given scanty attention.  

Forsskål’s pamphlet, his battle with the Chancery Board, and his emphasis on public access instead of secrecy undoubtedly contributed to the creation of the Freedom of the Press Act. Of the central actors, Nordenkrantz – and, very likely, Chydenius – were very familiar with Forsskål’s pamphlet and his actions before the Chancery Board.
Notes

2. Forsskål to the King, Stockholm, 23 January 1760. In Lagus 1877, p. 66.
9. Ibid. p. 17.
25. Forsskål 1756.
27. See Vegesack 2009.
28. Forsskål 1756.
29. Matinolli 1960, p. 49. On reviews in Göttingische Anzeigen, see also Persson 2009.
33. The version of Tankar om borgerliga friheten published in 2009 is based on the uncensored manuscript. There is reason to point out that a number of the changes Oelreich demanded were directed at improving the language. See Nordin 2013, p. 41.
37. Nordin 2015, p. 22.
39 Michaelis 1793, p. 65.
40 On licentia as freedom in contrast to virtuous freedom, see Wolff 2007a, pp. 34–62, 40–43.
41 Wolff 2007b; Wolff 2008.
43 Forsskål 2009 [1759], § 6.
44 Forsskål 2009 [1759], § 6.
45 Forsskål 2009 [1759], § 21.
47 The censor, Oelreich, demanded that this point be cut out as a condition of permission to print. Therefore, it can only be read in the original manuscript and in new versions published after 2009.
48 Cf. Chrydenius’ 1765 memorandum on freedom of the press. On Chydenius, see Gustav Björkstrand’s and Marie-Christine Skuncke’s contributions in this volume.
49 Admiration for England was not a matter of course in Sweden. One assertion often heard in Sweden was that it was not worthwhile to be interested in foreign examples or theories, as Swedish praxis surpassed them. See Nilsén 2001; Nokkala 2009.
50 Forsskål 2009 [1759], § 21.
52 Hunger 2002, 148 ff.; Matinolli 1960, p. 27.
53 Forsskål to Michaelis, Buhle 1794–96, p. 491.
54 Forsskål to the King, Stockholm, 23 January 1760. In Lagus 1877, p. 65.
55 In Lagus 1877, p. 66.
56 On the expedition to Arabia, see Baack 2014.
57 Patoluoto 1989.
58 Skuncke 2011, p. 143.
Anders Bachmanson was born in the parish of Brunflo in Jämtland on 17 January 1697, as one of the nine children of Lorens and Margareta Svedina Bachman. The family moved to Sundsvall in 1700, where father Lorens conducted business and ran an inn. He later became Mayor, and a Member of Parliament. According to his own testimony, Anders was not well-liked in the family, and by 1710 had been sent to be apprenticed to a merchant in Stockholm, and a year later to Gävle where he remained for eight years. After a few years at home in his father’s business, he undertook a journey abroad that led him to Dublin and London. He stayed in London for a year and a half, where – according to his travel book – he studied trade, economics, history and politics, as well as mechanics and experimental physics. The latter were of good use when, shortly after his arrival home in 1724, he constructed two pump works in Karlshamn and Karlskrona and designed a third at the request of the Russian Ambassador for placement in St. Petersburg.

After initially having been dismissed from Parliament in 1726 because he resided in Stockholm instead of Sundsvall, he was nevertheless finally elected as a representative for the Burgher Estate in Sundsvall after a storm of letters of protest. He had already made a name for himself there through an almost aggressive defence of merchants and trade. At the end of the Parliament, he was appointed Swedish Consul in Lisbon, where he would work until 1734. After his return home, he was accused of charging excessively high consul fees; a special commission led by Stockholm merchants such as Bedoire, Grill and Plomgren was then appointed. They found that the fees charged had been too high and Bachmanson was dismissed from his post in Lisbon, and a few years later his pension was also suspended. However in the meantime he had found another way out. In 1737, he married Margareta Sofia Schröder (1718–1757), a rich heiress to iron foundries and blast furnaces in Roslagen and in Finland.
The writings of political economist Anders Nordencrantz on monetary policy, censorship and the privileges of the estates opened the way for new ideas and new thinking. His texts, critical of the Government, became the starting shot for the showdown with the Hats – and an introduction of general freedom of the press in 1766. Lithography. The National Library of Sweden.
As a foundry owner, he took part in the discussions of the Parliament of 1742 concerning the creation of an “Iron Office” that would promote the interests of the industry. But once this came into existence in 1747, it was far from the creation the newly-ennobled (in 1743) Anders Nordencrantz had planned and had campaigned for. He had intended the Iron Office to be a body for wrestling power out of the hands of the rich, iron-exporting Skeppsbro nobility. The office was to have its own capital, trading directly overseas. More of the trade would also be transferred from England to France, which would also contribute credits. But instead, the Iron Office functioned chiefly as a cartel association to limit production, as power still lay with the export merchants. One of the leaders behind this construction was Thomas Plomgren – Nordencrantz’s enemy from 1734. As a consolation, Nordencrantz was appointed to head the National Board of Trade in 1747 and afterwards became a member of several commissions and deputations.

During the 1750s, his foundries started to do poorly; he sold them in 1756. The purchaser would later turn out to be a front for the firm of Finlay and Jennings. Both these Scotsmen, in turn, had married into the family of Thomas Plomgren. Together with Gustaf Kierman and Fredrik Gyllenbord, they would be on the front line of accusations in the showdown with the Hats in the Parliament of 1765, chiefly for their activities within the Foreign Exchange. For the rest of his life, Nordencrantz would accuse this group of consciously having sought to conduct an economic policy through the Exchange that affected him personally. The purchase sum for the foundries he sold had been on deposit until 1763, when the value of the money had fallen by fifty percent. In his 1762 polemical pamphlet *Svea rikes financeverk* (Sweden’s Finances), the accusations were such that its distribution was forbidden. He later returned to Finlay, Jennings, and Plomgren in several publications after 1765 as well. Three weeks before Nordencrantz’s death in June of 1772, however, they were acquitted of responsibility after a long-drawn-out trial. The body that issued the decision was the Secret Committee, led by the Caps. Known during the period up through the mid-1750s as a Hat, Nordencrantz had become one of the leading ideologues of the Caps. Now they were turning his friends against him as well, he may have thought as he lay on his deathbed.

**Polemical pamphlets**

After each sheet of Nordencrantz’s critical reckoning with the Swedish Government – *Till Riksens Höglofliga Ständer församlade wid Riksdagen år 1760. En wördsam föreställning uti Et Omständelig swar på de oförgipelige
påminnelser som uti Stockholms Post-Tidningar den 25 september 1758 kundgjorde bifwit... (To the Lawful High Estates of the Kingdom, gathered in the Parliament of 1760. A Respectful Idea in a Detailed Response to the Unassailable Reminders made known in the Stockholms Post-Tidningar of 25 September 1758...) – came off the press at the printer Ludvig Grefing in the parish of Maria in Stockholm, the author (wise from previous experience) took the publications back to his house on a continuous basis. Nordencrantz’s first printed work, which came out in 1730 when he was still named Bachmanson – *Arcana oeconomiae et commercii* – had been held by the censor for a full seven years before release was permitted in an abridged version. For the Parliament in 1756, he had published five polemical pamphlets, of which the one against the censorship system was confiscated and banned. Now he was more prepared, and so he took the sheets for safe-keeping.2

The cautionary measure was certainly not without grounds. Once Parliament had gathered in 1760 (it would remain sitting until 1762), the Hats in the Burgers’ Estate – and the Peasantry as well – wanted to impound the publication. But that did not happen. Instead, 1,000 copies were distributed in protest against potential censorship. A Committee was appointed during Parliament, however, including representatives of the various estates, in order to ascertain whether the author had broken any laws. It would hold a few meetings, but was shut down after a couple of years.3

In *Till Riksens Höglofliga Ständer*, Nordencrantz violently attacks various phenomena in the Swedish political system, the “method of government”. Chiefly, however, it was certain aspects of this that he attacked. Not the monarchy, or that there were different estates in Sweden. Concerning the estates, he says that they are “unavoidable” and “impossible to abolish”.4 That would have been too risky. Nor does anything indicate that, in principle, he was against the monarchy as in his view, republics also had a tendency to become corrupt. He felt, however, that the estates should not have different privileges and that they should better represent the people – that is, including soldiers and servants. Primarily, his bitterest criticism

Anders Nordencrantz’s first work *Arcana oeconomiae et commercii* was censored for seven years before it came out in 1730. The National Library of Sweden.
concerned the irremovability of state civil servants, particularly within the offices of the courts. The fact that higher judges sat for life – and were appointed according to nobility and rank, not competence – led to abuse and corruption, he argued. The tone in his colossal text – 690 tightly written pages in all – contains a general attack on conditions in Sweden during the governance of the Hat Party. General corruption was rife here, under which “individual” interests were at work. Secretiveness in the Government and in Parliament, the record of the estates and the committees that could not be published, and censorship of all critical thoughts did their bit to create suspicion and dissatisfaction, he wrote.

Nordencrantz’s polemical pamphlet from 1760 constitutes the actual starting shot for the extensive inquisition and reckoning against the Hats, which would lead to their fall during the subsequent Parliament of 1765 and the introduction of the general freedom of the press in 1766. During that Parliament, however, he was not the leading oppositional activist. Here instead, the daring chaplain from Nedervetil in Ostrobothnia, Anders Chydenius, emerged – and also an assembled Cap Party within the Estates of the Nobility and the Clergy. Together, they managed to remove the Hats from their positions of power on the Royal Council (the Government) and in the various assemblies of the estates. Nordencrantz instead served as an intellectual father and inspiration for the men driving the revolt – especially for Chydenius. The latter openly called Nordencrantz his “teacher”. When Chydenius, during the Parliament of 1765/66, produced propaganda for freedom of the press and the right to publish, it was not only his own publications he was thinking of but also the anathema that had been pronounced on several of Nordencrantz’s publications and petitions.5

Even after 1760, Nordencrantz continued to publish texts critical of the Government. In 1761, he published a penetrating criticism of the censorship system, and advocated freedom of the press and publication under a title that says it all: Tankar om frihet i bruk av förnuft, pennor och tryck (Thoughts on freedom in the use of reason, pens, and print). The following year, he attacked what he argued was a conscious economic policy to reduce the value of money and increase the flames of inflation. The cause of the Hats’ actions was that they were governed by private interests – bankers and rich traders in the ‘Skeppsbro Nobility’ in Stockholm – who wanted their debts to decrease in pace with inflation, he argued. In the firing line for this fierce criticism was the estates’ own bank and its Banking Commissioner, as well as the managers in the ‘Kierman Foreign Exchange’ that had been created in 1747 by the Hats in order to be responsible for controlling the issue of bank notes and increasing the value of money.
Alongside Gustaf Kierman, the managers of the Foreign Exchange were Thomas Plomgren (until his death in 1754), Erland Broman, Klas Grill and J. H. Lefebure. But the office was unable to – or did not wish to – resist and it was abolished by Parliament in 1761. Inflation continued to skyrocket. The proposal for measures that Nordencrantz suggested was reported in publications such as the 1761 pamphlet *Om Wexel-Coursen* (On the Rate of Exchange). This used as its point of departure the fact that the Bank of the Estates was supposed to withdraw bank notes and consciously try to “lower the rate” back to “par” – that is, as it was before the inflationary spiral started. It was, however, a method that would lead to a serious shortage of money and depression, argued Chydenius and others, who instead advocated moving forward more calmly.⁶

Meaning and the world of ideas

Perhaps somewhat misleadingly, Nordencrantz has afterward been regarded chiefly as a writer on economics. Without a doubt, he meant much to the growing criticism that would be aimed at what was called the ‘mercantilist’ policy of regulation that had become the distinguishing mark of the Hat Party since the Parliament of 1738/39. In retrospect, he is often mentioned as a “reform mercantilist”. Quite rightly, he stands out in his first work, *Arcana oeconomiae et commercii* – written, as noted, before 1725 – as clearly influenced by leading English reform mercantilists around the turn of the eighteenth century, particularly Josiah Child, the immensely rich director of the British East India Company, and Charles Davenant, author and political arithmetician. Nordencrantz wanted to promote Swedish trade and exports. But at the same time, he was against too many monopolies and restrictions. He wanted to open the way for immigration of foreign craftsmen and manufacturers – who were even allowed to be Catholics. This was, without a doubt, one important reason for the publication to be confiscated. Another reason was that he wrote it in Swedish – the book could be read by everyone!⁷

At the same time, he was an open opponent of a simplified version of what was called the ‘theory of balance of trade’ that was regarded as typical of conservative mercantilists – such as Anders Berch, the first Professor of Economics at Uppsala. In direct contrast to the official standpoint from the 1730s, Nordencrantz asserted that any potential Swedish ‘underweight’ in the balance of trade was not the fundamental case of the increase in the rate of exchange and the fall in the value of money. This ‘underweight’ was also one of the main arguments for a restrictive business policy. During
the Parliament of 1738/39, when the Hats came to power, a ‘manufacture policy’ had been introduced that entailed direct state support to the launch of Swedish factories and manufacture in textiles, porcelain and glass, and many other industries. The manufacturers were also given their own privileges and their own jurisdictions. Nordencrantz now rejected the grounds for this reasoning. The manufacture policy was an expression of the egoistic policies conducted by “individual” interests. The fall in the value of money had been consciously created by evil intentions and greedy behaviour.

However, to only see Nordencrantz as an exponent of a reckoning with an old economic policy and doctrines that were being placed in their graves in the general economic development of ideas in the mid-1700s is to reduce him. He already displays wide reading in contemporary political and moral philosophical – alongside economic – foreign literature in his *Arcana*. English economic authorities are cited profusely here: Davenant and William Temple, and also Bernard de Mandeville’s *Fable of the Bees* from 1714, which he discovered in London and which served as a source of inspiration. He would further develop this interest in European learned debate in his later publications. In contrast to most at the time, Nordencrantz read English texts and books. But he was also familiar with French moral philosophical, economic and political literature. In *Till Riksens Höglöfliga Ständer* he frequently refers to and cites French classical scholars such as Montaigne and also contemporaries such as Voltaire, Abbé de Condillac, Helvetius, d’Alembert and “Mirabeau” (!) – as well as Rousseau and Montesquieu. Among Englishmen, it is a matter of John Locke, Jonathan Swift and in particular David Hume. Other European notables that can be named are Samuel von Pufendorf, Hugo Grotius and Niccolò Machiavelli. When Nordencrantz refers to the latter with approval, it can be assumed that even the liberal censor at the time, Niklas von Oelreich, trembled a little.

In fact, in *Till Riksens Höglöfliga Ständer*, a moral philosophical study is delivered for the first time in Sweden – and in the Swedish language in particular – that bears strong resemblance to contemporary discussions raging in various quarters out in Europe. We can call them a part of Enlightenment thinking, but perhaps that is not saying too much. They rested, however, on a foundation that prepared the ground for new, free ways of looking not only at the method of government. They offered a more pluralistic view that propagated for a balance of power, openness, the right to criticise and publish. Indeed they even stated the fact that Members of Parliament could be considered to be representatives of their electorate, which meant that they could be held accountable for their actions (the
feared and forbidden ‘doctrine of principalship’). Without a doubt, it was this kind of thinking put forward by Nordencrantz in 1760 – and in later publications – that laid the ground for the 1766 legislation on freedom of the press and the right of public access to documents.

Those who believe that new ideas such as those Nordencrantz put forth at that time have to do with the idealised view of the Enlightenment as a doctrine of progress and euphoria will be quickly disappointed. In fact, he had a very pessimistic view of humanity. In direct contrast to Rousseau – who was his archenemy in the intellectual respect – he argued that humans in their natural state are raw, wild and barbaric: a “knave” governed by egoistic passions. At the same time, humanity has what Nordencrantz calls a “substance” for reason that can be cultivated through “social life and reasons for reflections”. But for reason to grow, laws and a civil system are needed. Humanity in its natural state is not really a “noble savage” equipped with a “natural light” as Rousseau imagines, he asserted.  

View of society

Nordencrantz reveals his intellectual dependence on the Scottish moral philosophers (especially Hume), as on the great Pufendorf, when he discusses human society, the origin of which is not due to people suddenly realising that they must come out of their natural state, become social and draw up a social contract. Sociability is already a part of the human passion in its original stage. Humanity is neither better nor worse when it enters into society. Things of this kind are not formed voluntarily, but instead out of necessity when the “human multitude” grows, needs increase and space decreases. In fact, societies “were not formed according to what the well-being of the whole or of the plurality requires”. Humanity is the same in its original state and in society, and the latter is characterised “by an infinite number of demands opposing each other”.

Equipped with such an anthropology at heart, Nordencrantz can then go further and paint the Swedish method of government at that time in darker colours. The laws and edicts in existence did not come about through any sort of contract when humanity emerged from its natural stage. Laws are changeable over time, and humanity is inclined to make mistakes. This applies in particular to “the great and the authoritative”. That is why it is important, for example, that higher judges and civil servants are “ambulatory” rather than possessors of lifelong positions. It is in this context that Nordencrantz also examines something he calls “corruption”. All power corrupts. And if humanity at heart has been a “knave”
since the days of Adam, it is important that barriers are built into a society to limit what powerful people can do. He refers here to the English Constitution and Government. There, they had created such “checks and balances”. England was by no means free from corruption. But its division between legislative and executive power was desirable, he argued. This was not the case in Sweden. Here, confusion between both instances occurred all the time. He also praised England’s propensity to have few fundamental laws, as well the common-law practice of its courts. The country’s liberal rules for publication were also brought up as a condition for something he called “free governance”.

Like his rejection of society as a rational construction voluntarily established by humanity, which thus renounces its “natural” guise, his discussion of power corrupting is directly taken from the major moral philosophical discussions in contemporary Europe. The reckoning with the former concerned in particular repudiating the philosophy that Christian Wolff in Halle practised earlier in the century that had gained great influence in Sweden. Economists who gladly wanted support for their curtailment of freedom of enterprise – and of trade – took their arguments from Wolff and his disciples.\textsuperscript{11} Regulations certainly entailed curtailment of personal freedom, but were an expression of civilised humanity’s entrance into society. Scotsmen such as Hume and Smith – like Nordencrantz and many others – thought otherwise. People are governed by their passions; if they are included in any society, it “was for individual aims and from a natural desire for social intercourse”.\textsuperscript{12}

A main theme in Nordencrantz’s publications, starting with Till Riksens Höglofliga Ständer, was warning against the risk of corruption. In all essentials, this was a fruit of his reading that he took from the moral philosophical discussion that was generally ongoing at that time. Historians of ideas have pointed out the strong influence from a tradition of republican ideas that, via Machiavelli, landed among such people as the reform mercantilist Davenant in England and many others at the end of the 1600s.\textsuperscript{13} Like them, Nordencrantz indicates – with examples taken all the way from the fall of Athenian democracy up through to his time – how too much power in the hands of too few tends to lead to corruption and the decline of society. No government is really excluded from this “law”. This applies as much to republics as it does to monarchies, including autocracies, which are especially easily corrupted through “customs of silence and secrecy” established by corrupt toadies. The only remedy for corruption is an enlightened regiment of civil servants and political representatives who can be replaced and held accountable. Here there is also a clear influence from an idealised citizen run trading republic in which power rests in many
hands and in virtuous citizens. But virtue was no total guarantee. Referring to Machiavelli and Hume, he insisted that law always had to precede good custom, and not the other way around. They do not come about by themselves, but are created by law as well as rising prosperity. A wealthy citizen could, through “his common interest with the Kingdom in well-being be believed to be more difficult to corrupt than a poor one”.14

Posthumous reputation

Nordencrantz’s posthumous reputation has not always been particularly positive. He has been considered heavy reading and long-winded. His frequent quotation of foreign philosophical authorities has sometimes been perceived as ostentation and boasting. Economist and historian Eli F. Heckscher, who primarily commented on Nordencrantz’s efforts as an economist, argued that the latter was a poor thinker.15 Particularly in the discussion on the causes of inflation, he displays poor insight into even the most elementary economic theory. Others have been more generous, indicating that Nordencrantz was unusually well-read for his time. In contrast to nearly every other contemporary, he read works in English; English authors were otherwise read mostly in Sweden via translations into French. In addition, he discussed many leading authorities without bias – Montesquieu and Rousseau in particular – and thought nothing of criticising them.

Above all, Nordencrantz was perhaps a pioneer for new ideas and ways of thinking. It would be ahistorical to assert that he was a democrat. But when he took up the lance for increased openness and civil freedoms, he nevertheless pointed forward in that direction. By casting off the idea that power came from God or lay in the social contract – and could therefore not be criticised – he cleared a path for ideas that could not bloom in earnest until much later on. But perhaps we will be satisfied with appreciating him based on the conditions of his own time. During the turbulent epoch of the late Age of Liberty, he was a radical force that helped overthrow the rule of the Hats. As we have seen, he was without doubt one of the most important instigators of the Freedom of the Press Act of 1766. And that, perhaps, is good enough.
Notes

3 Malmström 1900, pp. 13 ff.
4 Nordencrantz 1759, pp. 72 f.
5 On Chydenius, see Gustav Björkstrand’s contribution to this volume. See also Virrankoski 1995, and Magnusson 2012.
6 See further Malmström 1900, pp. 73 ff., 109, 184 and further 313 ff.
7 On mercantilism and reform mercantilism in Sweden, see Lars Magnusson 2001, Chap. 1; see also Heckscher 1949, pp. 812 ff. and Karl Petander 1912, pp. 103 ff.
8 For a discussion of the various currents of thought in Europe around different interpretations of natural right, see inter alia Hont 1987. For a discussion of Sweden in this regard, see Magnusson 2001, pp. 51 ff. or Magnusson 2012.
10 Words often used by Nordencrantz. See e.g. Nordencrantz 1759, pp. 22, 108, and several other places.
11 On Wolffianism in particular in Sweden, see Frängsmyr 1972.
12 Nordencrantz 1759, p. 108.
13 See Pocock 1975.
14 Nordencrantz 1767, pp. 64 f.
15 Heckscher 1949, p. 769.
Anders Chydenius

I speak only in favour of the one small but blessed word – Freedom.

Gustav Björkstrand

There was very little to indicate that Anders Chydenius, born on 26 February 1729 as the second of eight children, would ever achieve a prominent place in history. Born and raised in Sotkamo, and from 1734 a resident of Kuusamo in the far north-eastern part of the Kingdom of Sweden, his opportunities to gain an education and exposure to the impulses that could develop his personality were few. The parish in which his father, Jacob, was rector covered an area stretching from Lake Oulu to Lake Inari in what is now Finland – larger than the area in the western part of the Kingdom from Skellefteå to Treriskröset, but with only 900 inhabitants. The fact that things turned out differently was due to his father’s efforts to provide his children with knowledge.

Next to God, I have a loving Father to thank [– – –] for untiringly instructing me from my tenderest years. He did not follow the usual path of merely burdening the memory of his children during their instruction. He taught them to think and at the same time to let the light of reason incline their hearts to virtue and piety.

Schooling and studies (1745–1753)

After home-schooling, and schooling in Oulu and Tornio, he began his academic studies in 1745 together with his older brother Samuel at the Royal Academy in Turku, and later at Uppsala University. Among his teachers were Johan Browallius (1707–1755) who, like Linnaeus, emphasised that God had created the order and balance in nature and that humanity was obligated to study it through the natural sciences. Karl Fredrik Mennander (1712–1786) emphasised more strongly than his master, Samuel von
The city of Kokkola honoured Chydenius in 1766 by having his portrait painted. The painting, by Per Fjällström, can be found in Alaveteli Church.
Pufendorf, the independent value of Christianity and the natural equality of people. This physiotheological interpretation was common at the time, and it was natural that Anders would also assimilate it.3

For Samuel’s part, the brothers’ marked interest in natural science resulted, after his period of study at Uppsala, in his becoming a Reader in Chemistry and Mineralogy at the age of 26 (and later an Adjunct Professor) at the University of Turku. He was regarded as a promising scientist and engineer. The Academy of Science had great hopes. Anders took part in Samuel’s research; in 1751 Samuel successfully defended his dissertation in Latin on the promotion of river and marine traffic in Finland. Anders also dedicated himself to the same subject – the brothers perhaps naturally considered it to be important after their childhood in the vast, trackless wilderness. Anders himself wrote a thesis in 1753 on North American birch-bark canoes, remarkably enough in Swedish, under the supervision of Pehr Kalm, Professor of Economics. The idea, most likely, was that country folk would also benefit from the thesis – something he later tried to inspire his fellow parishioners to do. This meant he was given the nickname ‘Näver-Ant’ (Birch-bark Andy). Samuel lost his life at the age of 30, studying the depth of the Kokemäki River at the request of Major-General Augustin Ehrensvärd. He was given a lofty tribute in a commemorative speech at the Royal Academy of Science by his friend and fellow student Claes Blechert Trozelius as an “auspicious genius”, with a view to his many technical discoveries and his ability to learn.4

It is clear that Anders, inspired as he was by Samuel’s successes, also had plans to take up an academic career. In the autumn of 1752 he applied for a Readership in Natural History and Physics at the Royal Academy of Turku, but the position was not filled as there already was a reader in the subject and his qualifications for the position were quite modest. Had the outcome been different, the undoubtedly gifted Anders could have become not only a reader but also perhaps a professor and a bishop, something that many of those who later worked together with him for religious freedom would become. Chydenius did not return to his plans, but chose instead to be ordained in 1753 and take the position of Chaplain of Alaveteli, located twenty kilometres from Kokkola and belonging to the parish where his father – already rather hard of hearing – was Rector. He was needed to help and support his father. In his Autobiography (1780), he justified his choice of career by saying that after having been “cooked” in the philosophical sciences, mathematics, geometry, astronomy and mechanics, he chose to dedicate himself to the office of shepherd also disdained by clerics. He abandoned all “fine Theological Distinctions” and their “dizzying heights” to instead follow the Apostle Paul’s lesson in Titus 1:9, “hold firm to the...
It was not primarily an issue of disappointment that an academic career appeared closed to him and that his father needed his help. During his childhood, he was already strongly influenced by the pietistic gentleness of his father and his teacher Johan Wegelius, and his unswerving admiration for the residents of Alaveteli led to him feeling called to the Church. Being able, he hoped, to succeed his father in the respected and flourishing parish over time was not a bad alternative.

Chaplain and Rector of Alaveteli (1753–1770)

His first years as a Chaplain of the modest parish of 570 inhabitants, almost all working in agriculture, were trying. His stipend was small and had not been clearly stipulated, since the parish also had to do their part in remunerating their clerics in the mother parish; his application for promotion to Rector was approved by the cathedral chapter only seven years later. Anders had to manage the bilingual parish alone and, in order to manage his childless family’s upkeep, he began to cultivate the grounds of the vicarage. In a utilitarian spirit he drained marshes, prized loose rocks from the fields, constructed a garden with a large number of herbs and root vegetables, acquired Spanish merino sheep, began growing tobacco for sale to a newly-founded factory in town, and started growing potatoes. His wife, Beata Magdalena Mellberg, most likely managed the household, and was responsible for managing the cattle and for weaving cloth and textiles. He reported on his experiences in his first two pamphlets, awarded silver medals by the Royal Academy of Science, on the best way to cultivate moss-grown fields and on improving marshes. The first pamphlet was also published in Halle in German translation.6

The Government’s ambition to persuade clergy to take responsibility for health care due to the limited number of doctors available led to Anders devoting considerable time to improving himself in the subject, growing medicinal plants and manufacturing medicines in his modest medical laboratory. He was especially interested in the treatment of the eyes and declared himself as having operated on eyes “with almost unbelievable success”, including when eyelids had turned in on the eyes themselves. In addition, he succeeded after considerable effort to persuade the country people to vaccinate their children against smallpox.7

But above all, Chydenius was a priest during his 17 years in this little parish. He was very successful in his mission, and his sermons became widely known to the point where people from neighbouring parishes came to listen. He began holding a writing school for young people as prepara-
tion for their first communion. For more than 15 years he arranged special gatherings at his home on Sunday afternoons in a pietist spirit, for the purpose of educating and exercising care of the soul. The purpose was “to convince and to move, to change and to improve on the path of Christianity and virtue”.

Dawning political interest

“Nothing was I less acquainted with than with politics, when I became a Priest,” Chydenius states in his Autobiography (1780). This interest was initiated during his time as Chaplain of Alaveteli where, despite everything, the world seemed narrow and closed. In 1754 businessman Anders Nordencreantz was commissioned by the Government to examine issues connected to the economic situation and the rapid inflation that was then under way. He compiled an extensive work, which the Change Commission aided by Parliament in 1760 would transform into proposals for action. These proposals were not processed by the Government, since Nordencreantz felt that the Government’s policies were the cause of the declining value of the currency. Chydenius acquainted himself with political discussions from 1756 through Riksdags-Tidningar, and his interest in politics grew when he read Nordencreantz's pamphlets on monetary policy, censorship, bureaucracy and the privileges of the estates. Despite finding Nordencreantz’s writing style heavy and full of repetition, and complaining that he used quite a bitter tone, the pamphlets were so rich in thought and knowledge that Chydenius’s interest in politics was seriously aroused. Most likely, he had already become interested in the ideas of the Caps political party through Petter Niklas Mathesius and his brothers. In the winter of 1761–62, he wrote his first political pamphlets, which remained unpublished but dealt with the same subjects he would later return to.

Chydenius achieved his breakthrough as a politician at a protest meeting in Ostrobothnia on 17 February 1763, when he gave a speech that attracted a great deal of attention on the importance of extending trading rights, a vital issue for the coastal cities of Ostrobothnia. The economic situation in the country became even more troubled, and the Government was forced to convene Parliament in September 1764. The election of members of Parliament from Ostrobothnia was dominated by the trade city issue, and the Ostrobothnian Caps saw to it that Chydenius was elected as the Estate of the Clergy member, despite it being debatable whether they were entitled to their own representative.
Only ten days after the opening of Parliament on 15 January 1765, Chydenius presented himself to the Clergy through a *Memorial om valet av ledamöter till utskotten* (Memorial on the election of members to the committees), a proposal that would have affected not only the Hats Party but also many of the Caps’ leading men and was in conflict with the list of electors that had already been drawn up. Chydenius himself admits that it was a memorial that “everyone probably gaped at”, but he did not let himself be discouraged by its reception. He wanted to show that he would not be satisfied with being a Member of Parliament for a single issue, but intended to influence all central parliamentary issues. He was appointed a member of the Fisheries Committee and of the General Appeals Committee, and in addition – in his capacity as MP for the Clergy – received a seat in the Grand Joint Committee.\(^\text{10}\)

**Work in Parliament 1765–1766**

Coming from the calm of his little parish in Alaveteli to the metropolis of Stockholm, with its pulsating political life, must have been a revolutionary experience for Chydenius. Now he had the opportunity to acquire information, exchange opinions and put forward his own views. And he spared neither time nor energy – there was a volcanic flow of activities. “This was my proper work. When the clatter and noise of the workshops cease, the calm of midnight provided the most peaceful working hours,”\(^\text{11}\) he said after Parliament had closed. During his brief time as an MP, he published a large number of pamphlets that still seem remarkably well-formulated and thought out. This was one of the high points of his career.

On his arrival in Stockholm, Chydenius brought with him two pamphlets ready to print. The first, which dealt with trading rights, was paid for by the city of Kokkola and was published in the middle of February. It was distributed free of charge to all MPs.\(^\text{12}\) The second, which came out at the beginning of April, constituted his response to the Academy of Science’s question about the causes of emigration, which he had written the year before. But this was only a prelude. Chydenius contacted the printer Lars Salvius, who had an extensive library of domestic and foreign literature. Salvius, who himself was politically active, convinced Chydenius to write about the Shipping Ordinance which, in Salvius’ opinion, favoured the privileged classes.

Chydenius was interested and studied the issue – which was unfamiliar to him – and in the middle of April 1765 his famous pamphlet *The Source of Our Country’s Weakness* was published. Through his membership of the
Fisheries Committee, he was given access to the Board of Trade archives and could see the negative effects that group interests had on the work of preparing and passing legislation. He used this source material in his economic pamphlets. With arguments taken from Christopher Polhem, Lars Salvius, Christian König and Pehr Adrian Gadd, Chydenius wanted to show that the Shipping Ordinance, thought to be the cornerstone of the Swedish economy, was in fact the source of the Kingdom’s weakness and favoured the wholesale dealers in Stockholm and Gothenburg at the cost of other businesses and the entire national economy. Two large-scale printings sold out in a few weeks and led to a storm of debate against the unknown author. “Little critiques of the Source began to fly like swarms of birdshot; they were merely harbingers of the two general salvos that were then fired off against it one after the other,” Chydenius wrote in his Autobiography (1780). In his biography of Gothenburg Bishop Erik Lamberg, biographer Peter Wieselgren characterised Chydenius at that time as follows:

A poor beggar boy collects parishes and sings Latin for the farmer’s wives, learns a tiny compendium in theology and a liber moralis in Latin, becomes rector with an income as high as that of a porter, and is elected a Member of Parliament by his peers.13

This assessment clearly shows how difficult it was, initially, for leading politicians to take Chydenius seriously. That he, as a new Member of Parliament and as a chaplain far down in the Church hierarchy, would adopt that sort of tone was simply more than anyone could accept. When other, more distinguished, authors aimed criticism at his pamphlet, he decided to counterattack. In The National Gain, published in July 1765 by his own publishing house and which he himself called “a little piece”, he attacked the traditional mercantilist view that achieving an active balance of trade was the most important aim. Like the reform mercantilists and the Proto-Physicrats, as Lars Magnusson has pointed out, 14 Chydenius emphasised that the national gain could not be increased through subsidies to the export industry. However, he went further than they did. He condemned, in principle, all economic regulation within agriculture too, which was rare for that period. He appreciated the value of industry and trade, and strongly criticised the idea that only the state could find a correct balance between the various export sectors. The correct balance arose only if each separate individual, without statutes hindering them, could seek “voluntarily the place and the business where they best increase the National Gain”. As Virrankoski has emphasised, Chydenius was primarily a ‘hard liberal’. Several experts in the field, Eli F. Heckscher and Lars Magnusson among them, felt that this pamphlet is Chydenius’s most important work.15
In his extensive pamphlet *A Circumstantial Response to the Refutation of the Treatise Entitled: The Source of our Country’s Weakness, and Remarks on the Water Tests Conducted at the Same Source*, Chydenius – in a full 153 pages – reviews and refutes all counterarguments stated against his pamphlets. In his *Autobiography* (1780), Chydenius himself stated, amused, that he had “loaded more than they could imagine”. The same month that *A Circumstantial Response* came out – November 1765 – the estates made a decision on the issue that was the cause of him being elected as an MP, namely trade. The Baltic cities of Vaasa, Kokkola, Oulu, Pori and Härnösand were granted rights to conduct trade in foreign harbours. The decisive factor was that a majority of the members of the Burgher Estate, who had been influenced by Chydenius’s pamphlet, were convinced that reform was necessary.

**Freedom of the press and public access to official documents**

At this stage, Chydenius was zealously occupied with other (and in current thoughts, more important) issues, namely freedom of the press and public access to official documents. The idea was not a new one. People such as Christian König, Anders Nordencrantz and Peter Forsskål – the latter from Helsinki and author of the pamphlet *Tankar om borgerliga friheten* (Thoughts on Civil Liberty), published in 1759 and later confiscated – had demanded increased freedom of the press. Interestingly enough, Chydenius does not mention Forsskål in any context, despite him coming from the eastern part of the Kingdom. Forsskål should also have been of interest due to his sharp formulations. See Nokkala’s article on Forsskål.

The issue of freedom of the press had been debated in the Parliament of 1760–62, but with no result. In the Parliament of 1765–66, it was taken up again through memorials written by Anders Schönberg and Gustaf Cederström, and through a memorial signed by Anders Kaftman from Porvoo, but authored by Chydenius. When the Caps came to power, opportunities to push the issue through increased. This was not new to Chydenius. In his pamphlet on the causes of emigration he had already emphasised that the na-
tion’s policies should be founded on citizens’ mutual exchange of views. After having been taken up in the Grand Joint Committee, the issue was referred to a special Third Committee. Three of the estates had Finns among their representatives. Apart from Karl Fredrik Mennander, the conservative Bishop of Turku, the Clergy was represented by people such as Anders Chydenius from Alaveteli. Among the three representatives of the Burgher Estate was Mayor Erik Miltopaes from Tammisaari; among the three representatives from the Peasantry Estate was Henrik Paldanius from Kuopio. The Committee was thus dominated by Caps and by representatives from the eastern part of the Kingdom, especially as the Hats’ representatives were not particularly diligent at attending meetings. However, the interest in this issue also shows, as Juha Manninen has pointed out, that it exhibited a clear regional policy aspect. Those outside the innermost circle also wanted to know what was going on in the capital so that they could influence matters before decisions were made.16

The report of the Third Committee concerning the freedom to write and freedom of the press was dated 18 December 1765 and was submitted to the Grand Joint Committee at the end of February 1766. As early as 1880, Finnish historian Ernst Gustaf Palmén stated that it was Chydenius who wrote the report, however this assertion could not be corroborated. It dealt primarily with the practical limits to freedom of the press, but also contained a proposal on widespread public access to official documents. In the rough draft to the Memorial on the Freedom of Printing, Chydenius’s introductory words were as follows:

It requires no proof that an equitable freedom of writing and printing is one of the firmest pillar on which a free government may rest; for otherwise the Estates can never possess the requisite knowledge to institute good laws, administrators of the law will be subject to no control in the performance of their offices and those under its jurisdiction have little knowledge of the requirements of the law, the limits of official power and their own obligations; learning and good sense will be repressed, coarseness of thought, expression and manners gain acceptance and within a few years a horrific darkness will settle over the entire firmament of our liberty.17

Chydenius diligently defended the report of the Third Committee in the Grand Joint Committee and, according to the records of the Committee, he himself wrote an additional report, Additional report on the freedom of printing. In the report, the censor system was dismissed as both unnecessary and harmful with the support of the Estate of the Peasantry. It was above all the issue of public access to official documents that met with objections, since it could easily be used by the Caps for political purposes. On one point, Chydenius did not get his way. He wanted to shift responsi-
bility for printing to the printer, whereas the Committee preferred to give the copyright holder or the author responsibility. Chydenius yielded to this when he wrote his report. The Committee’s document was concluded in the autumn of 1766, when Chydenius had already been expelled from Parliament.\textsuperscript{18}

A picture of Anders Chydenius adorned the Finnish thousand-mark note up until the country introduced the euro.

In his \textit{Autobiography} (1780), Chydenius states that he worked more on freedom to write and freedom of the press than on any other issue during his time at Parliament. Nordencrantz had opened his eyes to the fact that this was a question of “the most precious possession of a free country”. The shortcomings of the prevalent system were obvious, according to Chydenius: political governance, corruption and unjust treatment. But he also conceded that it was “also very acceptable of the party that had so long been subordinate and was now in power for the first time, which desired to uncover the secrets that had been concealed by the previous ruling party”.\textsuperscript{19} But for Chydenius, the issue was also central for reasons of principle: openness, access to information and public discussion were, according to him, the very foundation of a better society.

The Ordinance on Freedom of Writing and Printing was issued on 2 December 1766. The law was unique in Europe; also unique was its status as constitutional law – or, as the ordinance says: “may the unfailing existence of the freedom to write and freedom of printing that has been determined possess the absolute assurance that an irrevocable constitutional law entails”. It was not permitted to be valid for very long, however. After the revolution of 1772, these freedoms were circumscribed in the
new 1774 Ordinance on the Freedom of Printing, and also later in 1785 and 1792. However this does not detract from the significance of the fact that Chydenius contributed more than anyone else. Not simply discussing the need for freedom of the press and public access to official documents, but also to Sweden becoming the first country to legislate on this issue with the status of constitutional law. The foundation of the Nordic principle of public access to official documents had been laid.

Chydenius forced to leave Parliament

For Chydenius himself, another issue had created a difficult situation. The Caps were attempting to resolve the critical economic situation the country was experiencing by gradually improving the value of money. Drastic inflation had been caused by the policies of the Hats. This was necessary in order to calm Government officials, who as a rule received their wages in cash, and the lenders, who had outstanding claims that would be paid in cash. Initially, Chydenius also supported this line that had been staked out by people such as Nordencrantz, and which he himself also covered in his earlier pamphlets. But gradually – especially after he acquainted himself with the pamphlet *Excerpts from lectures concerning the exchange rate arising in Sweden*, published in 1761 by Pehr Niclas Christiernin, Adjunct in Economics at Uppsala University – he arrived at the conclusion that the policy could not be implemented. Others, including assessor Emanuel Swedenborg in 1722 and Cap politician Baron Christer Horn in March 1766, had also come to similar conclusions.

Chydenius tried to gain a hearing for his new standpoint, but no one listened. He then decided to appeal to the general public, and in the spring of 1766 signed the pamphlet *A Remedy for the Country by Means of a Natural System of Finance*. In it, he stated frankly that the decision of the estates – which he preferred to call a “proposal” – to improve the value of money by 100 percent was impossible, unreasonable, unnecessary and in several aspects directly harmful. He also succeeded in getting the pamphlet printed after a series of complications when the reviewers appointed by the Clergy gave their approval. The pamphlet sold a large number of copies and aroused consternation in the Banking Committee and among the members of the Secret Committee.

Chydenius was called to a hearing before the Secret Committee, called a traitor to the Kingdom and was threatened with prosecution. The tense mood eased when the matter was transferred to the Clergy which, after long deliberations, decided to expel him from the Estate, which meant that
he was shut out not only from the current parliamentary session but also from the subsequent session.\textsuperscript{20}

Chydenius left Stockholm five weeks later; however this attempt to clip the wings of the radical faction among the Caps was unsuccessful. Anders Schönberg, who had earlier been negatively disposed towards Chydenius, changed his opinion after having read \textit{A Remedy for the Country}, and stated that the Rector was born “with more genius than is required for the head of a priest”. Daniel Tilas, who witnessed the session of the Secret Committee, realised that Chydenius had become the victim of a miscarriage of justice, and noted in his diary: “I fear that someday, it will go as Huss prophesied at the pyre. Today you roast a goose, but a hundred years hereafter a swan will rise from my ashes whom you will not be able to roast.” It did not take that long. Within a year, revaluation had led to economic disaster and the value of money was stabilised in roughly the way Chydenius had proposed, which he himself also called attention to in his \textit{Autobiography} (1780). As Lars Magnusson pointed out, the theory Chydenius used then is also accepted today.\textsuperscript{21}

However, immediately after his expulsion, Chydenius was resigned and unsure. This appeared clearly in his \textit{Shepherd’s Lay}, which he wrote shortly after his homecoming to Alaveteli, where he expressed his disappointment over the MPs’ ignorance, prejudices and shortage of moral fortitude, and also over his own ambition. He rejoiced at being able to return to his “sheep” and at the love and comfort he could find among them.\textsuperscript{22}

Despite his expulsion, Chydenius was also elected as member for the Ostrobothnian clergymen for the Parliament of 1769–70; however his mandate was rejected on formal grounds for him and some other clergy. Most likely there was also a fear – especially among the Hats, who had regained the majority – that Chydenius would again create problems for them with his sharp observations. On the way home, he travelled via Turku in order to take the pastoral examination necessary for him to be able to apply for his father’s position in Kokkola that had become vacant since his father’s successor had left after only two years. Chydenius was able to take up his duties in 1770.

\textbf{Rector of Kokkola (1770–1803)}

Over the subsequent years, Chydenius dedicated himself to his parish work. He built a large granite barn, new farm buildings and a large stable. The main building of the rectory was given new, uniform windows, and fitted with boards. After that, he concentrated on the medieval church, which was transformed into a cruciform church and was given a tower
that was completed only after his death. The graveyard was enclosed with stone walls. The town church was also the subject of extensive renovations. He was elected as Dean in 1779, which increased his area of responsibility. Chydenius was also interested in chamber music, and acquired high-quality music from Europe for the chamber orchestra in which people such as he himself and his nephew – the future Bishop Jacob Tengström – played. But above all, he dedicated himself to spiritual work in a pietistic spirit. He paid great attention to his sermons. It is clear that he accepted the ‘orthotomic application’ – that is, he appealed to the “certain”, the “awakened” and the “faithful”, or divided into “un-reborn” and “faithful” according to the model of Johann Jakob Rambach (1693–1735), pietistic author of sermons. He also agreed with the pietistic lessons on the order of grace in five stages: summons, enlightenment, rebirth, justification and sanctification. His interest in sermons found expression in his participation in the Theological-Homiletic Society’s sermon competitions in 1780 and 1782. This resulted in his winning first prize of 10 and 15 gold coins respectively, and was offered membership of the society, which the Pro Fide et Christianismo Society had also previously offered. Like all his other pamphlets, his competition sermons – around 1 000 pages – have now been published in *The Collected Works of Anders Chydenius*, in five comprehensive volumes in Swedish and Finnish. It is possible that the great interest he showed in the competitions was related to plans, in the 1770s, to divide up the extensive Turku Diocese, which stretched up to the northern border of the Ostrobothnia. Kokkola could, in that case, become the centre of the new diocese. Chydenius knew that there was criticism of his political involvement, and by showing that he also had extensive theological production behind him, he increased his chances of becoming a possible candidate in any future elections for bishop.

Chydenius called great attention to the fact that the catechisation, important to him, should be provided in discussion form. Here, he included the parish catechetical meeting, confirmation classes and individual conversations. The purpose of these was, like his sermons, to enlighten, convince and move his audience. Confirmation speeches were specially designed so that young people loudly expressed their strong religious feelings, which generated a great deal of criticism. Chydenius also continued calling the parish residents to gatherings after services for the purpose of “sinners, conversion and an active Christianity in the Love of God and your neighbour.” After this was completed, he reserved time for individual conversations. Tor Krook, who wrote a biography of Chydenius and was active much later in the same parish, says that these resulted in an immediate revival in the parish.
Chydenius also met with criticism concerning his demands as regards carrying out construction activities and for his spiritual work in the parish. The Moravians attacked him publicly for preaching more human wisdom than God’s word, and for being ambitious and devoting himself to worldly matters such as politics.27

In 1770, Chydenius was appointed Rector of Kokkola. His parish work now became more important than politics. Painting by Conrad Sovelius, circa 1870. Photo: Kokkola University Consortium Chydenius.

Continued political and societal activities

Chydenius’s political interests were reawakened in the mid-1770s. Dissatisfied as he was with the political games in Parliament, he held a coronation speech for Gustav III in which he placed his trust in the new King. He was given reason to intervene in the issue of trade rights when the Government wanted to concentrate foreign trade to Kaskinen, a little community in the southern part of Ostrobothnia that had only been granted a town charter in 1785. Such a decision would have meant, in practice, that foreign trade would again be concentrated to Stockholm. Even though he praised the King, his series of articles in December 1774 constituted a bold, uncompromising attack on government trade policy. His new friend, Anders Schönberg, found reason to turn to Court Chancellor Fredrik Sparre in order to try to prevent measures being taken against one of the “best geniuses in the Kingdom” who it was important to keep in “good humour” so
that he did not become “full of fire and passion”. The matter was allowed to rest for a few years until Chydenius turned out to be right, and the number of trade cities was expanded beyond those previously permitted.

In 1775, the Royal Academy of Gothenburg announced the competition question Is Rural Trade Generally Useful or Harmful to a Country? This gave Chydenius reason to advocate freedom of trade as intensely as previously. He referred to natural rights: people had the right to work for a living and to support themselves. The reasons brought forward against this were pure pretexts, since their purpose was to defend the privileges of the merchants. When the Academy stated they were ready to publish the pamphlet only if he made certain changes, he decided to publish it himself after having been encouraged to do so by Anders Schönberg and Count C. F. Scheffer.

In the late autumn of 1778, Chydenius published his new work: Thoughts Concerning the Natural Rights of Masters and Servants, dedicated to Gustav III. The background to this pamphlet was that Gävleborg County Assembly had determined that the 1739 decree on hired servants would be fully implemented. This meant that maids and servants would have a fixed annual wage that could not be exceeded, and that they would be allocated to employers by drawing lots. Chydenius emphasised that work was the hired servant’s only property. It was not right to force them to sell their goods at a fixed price; full freedom of contract between both parties had to apply. As Bo Lindberg pointed out, in relation to the history of ideas he based himself on natural rights without appealing to the revelations of God and the Bible. The pamphlet led to an intense debate with over 30 contributions in the press, during which Chydenius emphasised with acerbity, irony, and powerful arguments that even nature’s “Lord adjudged them the same rights that other men possess”. The issue was also discussed in the Parliament of 1778–79, but there Chydenius met strong resistance from the three higher estates, and the issue was dropped.28

The issue of freedom of religion

Chydenius had significantly greater success in another issue that was of immediate interest – namely, the issue of freedom of religion. For him, the issue was intimately connected with the question of freedom, which was the absolutely central word for him in all fields.29 Ostrobothnia was the promised land for the revival movement; this applied especially to the Kokkola region, from which some 60 people – the ‘Skevikarna’ – were exiled in the 1730s. Religious separatism resulted in a large number of trials in Church and secular courts. As Chydenius spoke for freedom of trade,
freedom of the press, public access to official documents and the right of hired servants to sign free contracts, it would have been surprising if he had not also wanted to take up the issue of freedom of religion. This did not happen, as has been maintained, primarily to win the favour of the King or his own political advantage. He consciously exposed himself to the wrath of his estate, and risked his entire political future. He justified his position as follows:

Actual experience and universal history provide incontrovertible proof that with the blessing of God, mildness, patience, enlightenment and a gentle instruction are the only means by which people who have gone astray may truly be converted.\cite{30}

The version of the course of events that Chydenius provides in his Autobiography (1780) immediately after the processing of this issue most likely corresponds to what actually happened. He wrote a first draft concerning freedom of religion in consultation with a few friends, and presented it to some members of his estate. Their powerful reactions convinced him that he would meet a lot of resistance if he took the issue further. He therefore requested a meeting with Gustav III, who he knew was well disposed towards the issue, presented the proposal to him and appealed for his protection, which he was also promised. After that, he drew up the final memorial. The King fulfilled his promise and saw to it that the issue was brought to the fore in the other estates. Chydenius was, as expected, subjected to harsh attacks by the majority of the Clergy and he lost their support in the following election, but was in return rewarded with the title of Dean by the Bishop of Turku, Jacob Haartman, and with the rank of Doctor of Theology by the King. Sensitive to flattery as Chydenius was, he could not help citing a statement by the King in his Autobiography (1780): “I am fairly audacious as well, but I would never have dared to do what Chydenius did.”\cite{31}

A concrete example of Chydenius having taken up the issue of Ostrobothnian separatism and the ‘Skevikarna’ is that, in 1779, Gustav III visited them on Värmdö in the Stockholm archipelago after Parliament approved the memorial on freedom of religion. The visit did not actually affect the ‘Skevikarna’ and other religious separatists and converts, since freedom of religion covered only immigrant foreigners and their descendants.\cite{32}

His work on freedom of religion, and perhaps also the self-awareness that Chydenius displayed after the Parliament of 1779, led to his receiving only a few votes in the Parliamentary elections of 1786 and 1789. On the other hand, he was elected to Parliament in 1792 by a satisfactory margin, since he had received support from noted individuals such as County Governor Adolf Tandefelt. The mood at the Parliament in Gävle was sub-
Anders Chydenius

dued, and the session closed after only a month. Chydenius’s efforts were marginal, and his brief contributions were characterised by great subservience to the King – perhaps with a touch of irony. His only contribution of significance dealt with Government monetary policy. In his statement, he first expressed his amusement over the proposal, and then crushed it completely as it infringed on the right of possession. His journey home was very dramatic as the ice over the Gulf of Bothnia gave way and the company managed to only just save themselves up onto a rock, where two carriage men froze to death before help arrived.\(^{33}\)

Chydenius maintained his political passion and the desire to develop society his entire life. When Nils von Rosenstein sent his book *Attempt at a thesis on enlightenment* to Chydenius in 1793, Chydenius could be gratified by the fact that the ideas for enlightenment and freedom he had fought for had also been adopted by Rosenstein. In his 1794 *Letters of the Society for General Civic Knowledge*, Chydenius published a translation of the censor ‘Maboth’s’ proposal to abolish censorship. The Society also presented his pamphlet *Thoughts concerning the Natural Rights of Masters and Servants* very extensively, which must have also pleased him. The following year, his pamphlet *On Saltpetre Houses* was published in the Year Book. He emphasised that farmers should be allowed to freely manufacture and sell saltpetre, since what the farmers did with their manure piles did not concern the state.

Inspired by an article on the opportunities of creating a kind of colony in the Sápmi regions of the Kingdom, Chydenius took up his pen and wrote the utopian pamphlet *A Proposal for the improvement of Lapland*, in which he advocated complete freedom of trade for the region. It was never published. The same was the case for the pamphlet he wrote in 1799 for the newly-founded Royal Finnish Agricultural Society as a response to the issue of the impediments to farmers’ efforts. This pamphlet, *The improvement of Finnish Agriculture*, constitutes a kind of summary of Chydenius’s social programme. Here, he repeated many of his earlier thoughts on freedom of trade, abolition of the decree on hired servants, and freedom of contract in the relationship between master and hired servant. From the final pamphlets on *Thoughts on Inoculating against Smallpox for the Finnish People*, the production of opium, and the early stages of potato cultivation in the Kokkola region, it can be seen that age had begun to claim its due.\(^{34}\)

Chydenius experienced one final distinction on 14 June 1800, when the Order of the Northern Star – an unusual honour for a clergyman – was conferred on him at the Parliament in Norrköping. He was still dictating his second autobiography on his deathbed in January 1803. He died on 1 February 1803.\(^{35}\)
The goose had turned into a swan

By education and occupation, Chydenius was above all a theologian and a priest. In his theology, he began from the perceptions of Lutheran orthodoxy, but commented on both supernaturalism and pietism. His markedly strong pietistic element found expression in the fact that, to him, the Bible was the central source of knowledge. He covered the order of grace, emphasised that priests must be converted, distinguished between the external parish and true believers and wanted to draw a clear line against everything “secular” in the form of luxury, alcohol consumption and entertainment.

In the field of politics, he was eclectic and, scrutinising critically, seized upon what he found useful in what the politicians and philosophers of the time had said. He built on natural rights and was influenced by the individualism of the Enlightenment and Pietism, but he had learned early on in childhood to empirically investigate everything that happened around him. It was there he found his practical examples that he later reported on with stylistic acuity in clear and logical – sometimes also directly ironic and virulent – descriptions. Few contemporaries of his could measure up to him in that regard. His capacity for work was astonishing, and his energy and desire for reform lasted his entire lifetime. His fortitude in standing by his opinions and fighting for what he believed to be right meant that he did not give way to risk or problem.

In his thinking, Chydenius began from the idea that the Creator had given both nature and human life a natural order that people could achieve if freedom were allowed to prevail. People were created equal, and it was important to stand up in defence of the weak against the rich and powerful. Everyone should be able to influence society, and this required that documents be public and that there was freedom of the press. One prerequisite for a happy Kingdom was freedom of trade. State control meant intervening in the course of events in a way that disturbed the natural balance that would arise if only freedom were prioritised. Freedom should also be applied in the field of religion, since compulsion did not lead to the desired effect.

However, all things considered, Chydenius’s most distinguishing quality was his versatility. Simply characterising him as an early Adam Smith or as the father of liberalism does not do him justice. In his pamphlets, he dealt with almost every field in society, and then purposefully attempted to put his ideas into practice. The poor beggar boy described as a goose appears 250 years later to be, if anything, a swan who cannot help but impress.
In connection with the 100th anniversary of Chydenius’s death in 1903, Walter Runeberg’s portrait bust was unveiled in Kokkola. Chydenius played a key role in pushing through the ordinance on Freedom of the Press in the 1765–66 Parliament. Photo: Pertti Hyttinen, Kokkola University Consortium Chydenius.
Notes

9. *Autobiography* 1780, Anticipating 2012, p. 338; ACSS 1, p. 37. Among them three books on political and economic questions, written 1761 or 1762, inspired by the Parliamentary debate and Nordenqrantz’s ideas.
11. Quote from *Herda–Qväde* (1766) [Shepherd’s Lay], ACSS 2, p. 376.
15. ACSS 1, pp. 380–409; Virrankoski 1995, 413.
22. *Herda-Qväde* [Shepherd’s Lay], ACSS 2, pp. 368–382.
29. Chydenius emphasised that he spoke “only for the very small, but blessed word: Freedom”, ACSS 3, p. 148.
In 1747 a Diet or parliamentary session (Riksdag) was in progress in Stockholm. The young Crown Princess Lovisa Ulrika, brought up in Prussia, described in a letter to her mother who was in Berlin her surprise at hearing a Swedish peasant – the Speaker for the Estate of the Peasantry – give a speech to the King ‘with such eloquence and such apt words as befitting of a learned man’. Barely 20 years later, in 1766, the estates adopted what has been called the world’s first constitutional law on press freedom. The focus of this chapter is on the debates and the work in the Swedish Riksdag that led to the Freedom of the Press Act, in what was a transition from secrecy as the given premise of political life to public access as the express principle. This account is based on a close reading of unpublished, as well as published, source material from the two Diets in 1760–62 and 1765–66. The chapter begins with a brief background description and concludes with a look ahead to developments after 1766 and until the end of the government under Gustav III – Lovisa Ulrika’s son.

Before 1760: Politics and printed media during Sweden’s Age of Liberty

During frihetstiden, or the Age of Liberty, the Swedish Realm – with its eastern half Finland as an integral part – was a minor player in the international arena. After the death of Charles XII, Sweden had lost its position as a European great power. But the country in which Lovisa Ulrika arrived as Crown Princess did have an original political system in a Europe dominated by absolutist monarchies, including her own home state, Prussia. In Sweden, the King’s powers were strictly limited; instead most of the power resided with the Riksdag estates. Social representation in the Riksdag was exceptionally broad, with the Peasantry constituting a fourth estate of its
own. Representatives of the three lower estates - the Clergy, the Burghers and the Peasantry – were appointed by means of election. When decisions were made in the Riksdag, each estate had one vote and the principle of simple majority applied. This decision-making procedure meant that, by European standards, a considerable proportion of the population – women nevertheless excluded – could take part in the political process.²

There were, however, institutional obstacles that limited opportunities for access and participation for those who stood outside the power élite. In early-modern Europe, affairs of the state were regarded as a secret domain, arcana. Sweden’s constitutional texts – the Instrument of Government (regeringsformen) of 1720 and, above all, the Riksdag Act (riksdagsordningen) of 1723 – established the existence of a Secret Committee at the Riksdag in which secret matters were determined and from which the Peasantry was excluded. The secrecy mindset was also evident in the regulation that records of Riksdag proceedings must not be ‘to anyone divulged’, but instead must be kept safe (the Instrument of Government 1720 Article 48, the Riksdag Act 1723 Article 22).³ As in most other European states, production from printing presses was subject to pre-censorship. Anything that was not expressly permitted could not be published.

In addition to these institutional obstacles, there were the power shifts that occurred in political practices during the Age of Liberty. In the contest between the two parliamentary parties, ‘the Hats’ (hattarna) and ‘the Caps’ (mössorna), the Hats had taken power in the Riksdag in 1738-39. The party was supported by big company owners and senior public officials, and ruled the country with a rod of iron for over 25 years. While the 1720 Instrument of Government had assumed a balance between three factors – the King’s majesty, the Council’s authority and the rights and freedoms of the Estates – a system developed during the Hats’ long rule in which the Estates’ powers, with the Secret Committee and its subsidiary bodies at their centre, could not be questioned. The King could not go against a majority of the Councillors of the Realm i.e., the government. These in turn answered to the Estates, which were empowered to dismiss (‘license’) them from office. The Estates, however, were not accountable to the electorate. The doctrine that members of the Riksdag should answer to their voters (referred to as principaler; hence the doctrine was principalatsläran), had been declared illegal by the ruling Hats, and its representatives punished.⁴

The party that held the majority in the Council had the power of controlling appointments to official positions. The Hats could thus appoint their own members to positions within the offices of the state. Civil service departments consequently served as extensions of the party, and a bureaucracy developed where outsiders had neither access nor insight.⁵ It should
be added that both parties were dependent on financial support from foreign powers: the Hats received subsidies from France, and the Caps from Great Britain and Russia.

Pre-censorship was managed by a learned public official, a censor liborum, who had to read through all written material intended for printing and publication in the realm, and check that they did not contain anything ‘offensive or indecent’ before he issued his permit (‘Imprimatur’ which in Latin means ‘may be printed’). The censor’s tasks also included other forms of supervision, such as monitoring book imports from abroad, but also concerns with the quality of published material. The censor was subordinate to the Kanslikollegium, the ‘Chancery College’ or civil service department charged with the supervision of the cultural sector. Writings on theological subjects were previewed by the church consistories before they were sent to the censor. Academic works were censored by the universities’ governing bodies.

The Swedish market for books was small in comparison with those of other European countries. Stockholm, which was where most companies in the book business were concentrated, had about 65,000 inhabitants around the middle of the 18th century; Paris had about 570,000. Swedish writers could not support themselves by their pens alone. A common pattern was that men wrote to further their civil service careers, thereby
making themselves dependent on those in power. There was only a limited press before 1760. While daily newspapers were published in England using advanced printing technology, no daily newspapers existed in Sweden. The semi-official *Stockholms Post-Tidningar* was published twice weekly and contained mannerly news items about the royal family and ceremonies, but avoided dealing with the frequently combustible doings of domestic politics. Periodicals made short-lived appearances, the most well-known of which was Olof Dalin’s *Then Swänska Argus* (‘The Swedish Argus’), in the early 1730s. Political debate was mostly conducted by means of illegally circulated handwritten communications.7

The censor’s political supervision of printed works functioned effectively until the mid-1750s. In 1746 for example, Gustaf Benzelstjerna, who was a member of the Hats, criticised a passage in a Swedish translation of *Gulliver’s Travels* (via a French translation) that dealt with whether ‘a voting assembly’ had authority over ‘he who has been elected’. This sounded too much like the perilous *principalatsläran*.8 Then, in connection with the 1755-56 Riksdag, a political periodical was first published in Sweden: *En Ärlig Swensk* (‘An Honest Swede’). It was a mouthpiece of the ruling Hat party, and censor Niclas von Oelreich served as its editor, but it was nevertheless a novelty that domestic politics had become the subject of debate in print. The practice of publishing parliamentary news in periodical form, *Riksdags-Tidningar*, was introduced during the same Riksdag. Oelreich tended increasingly to allow politically dangerous publications, though it is unclear whether this owed more to conviction or to cupidity – he was paid a censor’s fee only for the works he approved.9

Oelreich’s superiors in the Hat-dominated Chancery College, on the other hand, were ever more rigid in their supervision, and the censor repeatedly found himself at loggerheads with the authority. The most flagrant example of this was in the case of Peter Forsskål’s *Tankar om borgerliga friheten* (‘Thoughts on Civil Liberty’) from 1759, which was granted permission from Oelreich but was banned at the behest of the Chancery College – see the chapter by Ere Nokkala in this volume. The College had banned all discussion of Government policy in 1750 (‘that which depends on the government’s execution, or that which examines and assesses its previously adopted statutes’). In 1759, writing about Swedish constitutional law was banned until such time as a systematic (and orthodox) treatise on the subject had been published under the supervision of the Chancery College.10

The church authorities, which Oelreich also fell foul of, were equally unforgiving of dissidents. Confessed atheists were hardly to be found in Sweden at this time, but revivalist movements such as the Moravian Breth-
ren (*herrnhutarna*) were a threat to Lutheran orthodoxy. Despite the risk of fines, prison and even banishment, the Moravian Brethren doggedly continued spreading their religious texts, in the form of clandestine manuscripts as well as illegal books either imported from abroad or printed in Sweden.\textsuperscript{11}

The 1760–62 Riksdag: an aborted proposal

The Riksdag was due to assemble in the autumn of 1760. Discontent with the Hat regime was growing. Sweden had entered yet another unsuccessful war, the Pomeranian War with Prussia. The state’s coffers were nearly empty. Discussion of government policy was effectively forbidden.

A frontal assault on the Hats’ rule came in a memorial to the estates in the run-up to the new Riksdag, written by Anders Nordencrantz, a self-taught social commentator and member of the Riksdag.\textsuperscript{12} The book, a weighty tome, was written in the style of a learned treatise, with references to ancient authors as well as to the most recent English and French literature. It was kept at the level of principle, avoiding attacks on named politicians. One of the main sections – at over 50 pages – was devoted to press freedom. Citizens have a right to know how the realm is governed, but are hindered by ‘secrets’ and ‘reason being put under tutelage’, Nordencrantz thundered. In 25 points, he enumerated subjects where freedom should be given to ‘pens and print’, including officials’ administration, extraordinary courts, corruption, and not least officials’ positions within the Riksdag, where the same people that exercised power audited their own implementation of it. The Riksdag ought to be cleansed of officials, and legislative power be placed in the hands of property owners – the term Nordencrantz used was the Realm’s *Odalmän* (freeholders, more or less).\textsuperscript{13}

When Nordencrantz, towards the end of this section, presented concrete reform proposals regarding press freedom, they were not very far-reaching by present standards. The office of the censor was to remain – Sweden was not yet sufficiently enlightened to be able to dispense with tutelage – though the censor was not to be subordinate to the lifetime appointees of the Chancery College but to the Riksdag, in order to guarantee citizen ‘Control’ of power. Printing of publications on political subjects was to be permitted – including on the Realm’s relations with foreign powers, a sensitive item – and comments allowed about laws, including ‘certain fundamental laws’, and about financial statutes. Printing of certain types of documents from the authorities, such as committee reports, was also to be permitted.\textsuperscript{14}
Even if Nordencrantz’s actual reform proposals may appear limited, the book’s systematic analysis of the concentration and abuse of power paved the way for what we today call the Principle of Public Access to Official Documents. Nordencrantz employed rhetorically striking examples for his argumentation. By way of a reinterpretation of the work of a French Jesuit, Du Halde, China was transformed into the promised land of press freedom: a periodical in Beijing published the names of officials who had neglected their duties, he claimed. England in particular was enlisted in the battle for transparency. It was customary there to print records and votes from parliament, he maintained, and reproduced an excerpt from a printed collection of parliamentary debates – without mentioning the fact that the debate in question was from 80 years previously. The views of every member of parliament today can be read in newspapers tomorrow, he also claimed.¹⁵

Nordencrantz’s memorial had been approved by Oelreich, the censor, and was printed in 1759, but the criticism in it was too harsh for the Hat Government. The Council forbade distribution of the book until the approaching Riksdag. When this assembled in 1760, Nordencrantz demanded that his work be examined by the estates, which it was. The book was released and the entire edition of 1,000 copies distributed to the estates’ Riksdag members.¹⁶ And the text was indeed read: Nordencrantz’s ideas and arguments cropped up in the Riksdag debates of 1760–62 and 1765–66.

The Riksdag that opened in the autumn of 1760 would be the longest in the Age of Liberty – 20 months characterised by shifting front lines and unscrupulous scheming. The Hat Party had managed to maintain its position in the Riksdag election, and Axel Fersen the Elder, a Hat magnate, had been re-elected as Lord Marshal, i.e. Speaker for the Nobility. As a battering ram against the Hat Government, Colonel Carl Fredrik Pechlin moved in December 1760 that a Grand Special Deputation be appointed to examine Swedish involvement in the Pomeranian War and also to deliver an opinion on, among other things, ‘the freedom to write’. The Deputation was appointed consisting of representatives of all four estates, which satisfied the Peasantry since they were excluded from the Secret Committee.¹⁷ The ex officio Chair was Lord Marshal Fersen. Other militant Hats in the Deputation included the speaker for the Burghers, the wealthy

Anders Schönberg.
company owner Gustaf Kierman, and Burgomaster Olof Bidenius Renhorn. Colonel Thure Gustaf Rudbeck held a prominent position among the Cap members.18

During the Grand Special Deputation’s very first meetings, in January 1761, the proposal was raised – by Rudbeck, among others – that the Deputation’s own Minutes be printed. This was a hyper-sensitive issue since it concerned the Riksdag members’ own exercise of power. And Chair Fersen was quick to apply the tactic that would become his favourite way of averting threats from the opposition: stalling. A non-committal decision was taken that the Deputation’s documents (not ‘Minutes’) would be printed, but that the documents to be included would be decided later.19 The issue of publication of the Riksdag’s own documents would become a central bone of contention in the press freedom debates of 1760-62 and 1765-66.

In April 1761, the Deputation formally addressed the issue of press freedom. A committee was appointed to draft a report consisting of four nobles and two representatives each of the Clergy, Burghers and Peasantry – double representation for the Nobility in accordance with Riksdag practice. It included implacable party bigwigs such as Renhorn, a Hat, but also more moderate forces such as Baron Christer Horn and Anders Schönberg, a learned civil servant. Censor Oelreich was called in as an expert.20 The draft report – written by Schönberg, according to his own subsequent account – may be characterised as moderately in favour of press freedom. Discussion of political and economic subjects would be allowed in print within clearly defined limits, without arbitrary intervention. The transparency path taken by Nordencrantz was followed. Permission to print a large number of documents from ‘courts, colleges, consistories’ and ‘other public works’ would be granted, with the exception of documents from the Council. Permission also applied to a number of Riksdag documents, including all committee Minutes and reports, but not for the estates’ Minutes. Printing was subject to one condition: the censor’s signature. The office of the censor was to be kept, as in Nordencrantz’s proposal. The Committee was to come back with proposals for improvements to the censorship system.21

The draft report was discussed in the Grand Special Deputation on 29 May 1761. The issue of printing Riksdag documents again caused fierce debate. And once again Chair Fersen applied his stalling tactic. A decision was taken to postpone a systematic review of the report until the next meeting. But no such meeting was ever held. The Deputation ceased to function (the instigator, Pechlin, had been neutralised with the help of French bribes), and the report on press freedom came to nought.22

The matter of printing Riksdag documents was raised once more in 1762, when Baron Gustaf Reuterholm moved in the House of the Nobility
that their own Minutes be published, but his proposal met with almost unalloyed resistance and was rejected.\(^{23}\)

The aborted report would have meant extensive document disclosure, but would have retained censorship. The Committee’s clinging to the office of the censor, as Nordencrantz had done previously, has several explanations. The Grand Special Deputation and its working committee were dominated by the country’s social and economic élite, for whom it was evident that the ordinary people – ‘the lowliest congregation of a coarse populace’, in a phrase from the report – must be controlled and kept in check.\(^{24}\) It is indicative that the initiator of the Deputation, the nobleman Pechlin, took censorship for granted. The Burghers’ leading figures, including Hat members Kierman and Renhorn, united with their party brethren in the Nobility to protect economic interests. By contrast, the representative of the Peasantry, Harald Jönsson, harshly opined on the matter of publishing Riksdag documents that ‘the things ought to be printed’.\(^{25}\) On this the lower estates disagreed. Another reason that censorship was not questioned was that the office of the censor, as represented by Oelreich, was not especially odious. What was being battled in the 1760-62 Riksdag was not censorship but arbitrary interventions and abuses of power by the Hat authorities, and in that battle document disclosure would be a weapon.

The 1765–66 Riksdag: Press freedom victorious

A new Riksdag was summoned for January 1765, and this time the Cap Party managed, after more than 25 years, to break the Hats’ hold on power. The country was in the midst of a severe economic crisis, with runaway inflation favouring exporters from the major trading houses – pillars of the Hat party – but eating away at ordinary people’s purchasing power. New, well-educated élites from intermediate groups in society demanded that their voices be heard in public political life – these included members of the lower Clergy, small and medium-sized business owners from the Burghers, and dynamic farmer entrepreneurs from the Peasantry. At the same time, the concentration of political and economic power in Stockholm was questioned by interest groups from the periphery of the Swedish realm, in particular Finland. For representatives of peripheral Finland, as well as of the marginalised Peasantry, transparency and insight took on paramount importance.\(^{26}\)

The Riksdag was preceded by an intensive election campaign. Among the propaganda publications from the Cap camp was a condensed version of Nordencrantz’s memorial from 1759, conveniently reduced to 32 pages.\(^{27}\)
The Caps won across the board in the elections, and a new generation of radical politicians – historians have often dubbed them ‘the Younger Caps’ – took their places among the three commoners’ estates. An inquisition of the Hat regime began. The press freedom issue, buried during the last Riksdag, was disinterred during the spring of 1765 by means of three private motions from individual members. The first was a nobleman, Lieutenant Gustaf Cederström, followed by Anders Schönberg, who was also a nobleman and had been appointed as a royal historiographer, and who demanded that the report on press freedom written (probably by him) during the previous Riksdag be examined by the estates. In the Clergy, meanwhile, a private motion was submitted in the name of a Finnish member, Senior Master Anders Kraftman from Borgå (Porvoo), but which had in fact been written by Curate Anders Chydenius.

The private motions were referred by the estates to the Grand Deputation, a body which, like the Grand Special Deputation in the previous Riksdag, had been appointed to review the Hat Government’s exercise of power. Again it included members from all the estates. However, the ex officio Chair this time was the Cap leader and new Lord Marshal, Thure Gustaf Rudbeck, who had suggested in 1761 that the Riksdag Minutes should be printed. The Grand Deputation began discussing the press freedom motions in August 1765 and agreed to delegate the matter to a select committee: the Third Committee, or Press Freedom Committee.

The Third Committee was made up of fifteen members: six Nobles and three representatives each of the Clergy, Burghers and Peasantry. The Chair was a lawyer, Chief Judge Gustaf Reuterholm. It was he who, in 1762, had moved that the Nobility Minutes be printed, and at the Grand Deputation’s first meeting, in the spring of 1765, he had advocated the printing of the Deputation’s minutes. Among the Committee’s other noblemen were two military officers, Commandant Fredrik Linderstedt and Major Erik Gustaf Silfversparre; two royal court officials, the Chamberlains Barons Christoffer von Kochen and Gustaf Wachschlager; and Chancery Councillor Carl Nordenflycht, who had had a long career in the Chancery College – the body that supervised censorship. Commandant Linderstedt opposed press freedom throughout the Riksdag, while Baron von Kochen was a dedi-
cated supporter. The Clergy members represented different strata within the estate and different positions on the matter: against was the conservative bishop of Åbo (Turku), Carl Fredrik Mennander, of the higher clergy, while the radical Curate Anders Chydenius of Nedervetil represented the lower clergy; and between them in rank as well as views was a Dean from Skara, Anders Forssenius.

From the Burghers, three burgomasters of small towns were appointed: Israel Gadd from Skövde, Erik Miltopaeus from Ekenäs in Finland and Leonard De la Rose from Skanör. The Peasantry were represented by Jonas Bengtsson from Småland, Henrik Paldanius from Savonia and Johan Andersson from Uppland. Unlike in the previous Riksdag, Burghers and Peasantry were united in favour of press freedom. Attention has often been drawn to the strong representation from Finland – Mennander, Chydenius, Miltopaeus, Paldanius (see Gustav Björkstrand’s contribution to the present volume). Once again, censor Oelreich was entitled to attend the Committee’s meetings as an expert, and he was practically always present. The Committee’s secretary, Notary Eric Tholander, was responsible for the Minutes.

The Third Committee met a total of 21 times, between August 1765 and July 1766, with a particularly intensive period occurring in the autumn of 1765. Its approach was thorough. Chydenius and De la Rose requested information about what had happened to the press freedom issue in the last Riksdag. The Committee was evidently given access to written material from the Grand Special Deputation, as Chydenius later quoted an address made to it by Rudbeck. All previous statutes on the press freedom issue since the end of the 17th century were brought together and studied. The private motions submitted in the spring of 1756 were reviewed.

Following these preparations, the Committee members could set about their actual task in November 1765. They agreed on how to proceed: the Committee would present a brief report as well as a draft ordinance text, which would be divided into three ‘parts’ – the first on ‘press freedom in itself’, the second on censorship and the third on printers and booksellers. The report and the first part were drafted in the period up to Christmas. The Committee here laid down a central principle: anything that was not expressly forbidden could be printed. This was the opposite of the princi-
ple that had applied until then. The first part was to consist of two subdi-
visions: one specified ‘the exceptions’ from press freedom i.e. that which
was forbidden; the other what was permitted. The latter was to comprise
generally ‘everything that does not expressly conflict with the exceptions
stated above’. In addition, the ordinance was to specify a number of areas
in which printing was permitted.\textsuperscript{35}

The Committee first agreed on the exceptions – publications that were
contrary to the evangelical faith or the fundamental laws, offensive state-
ments about the King or the royal family, insults against estates, officials or
‘any other upright Swedish citizen’ – and on the criminal
sanctions for violations of these items (22 and 27 No-

vember). It then moved on to the ‘permissions’, es-

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establishing a list of different categories of docu-

ments which could be freely printed (9 Decem-
ber). These were mainly documents from vari-

ous public authorities, in line with the trans-

parency route taken in the 1761 report and

earlier by Nordencrantz, but the proposal was

radicalised to also include documents from

the Council of the Realm – the Government

itself.\textsuperscript{36} By 11 December 1765 the Committee

had got to the estates’ own documents, the is-

sue at the core of the disagreements in the

previous Riksdag. The Secretary, Notary Eric

Tholander was apparently otherwise engaged,

and in his absence, the minutes were kept by Anders Chydenius. The meet-
ing was attended by the Noblemen Reuterholm and von Kochen, the Cler-
gymen Chydenius and Forssenius, and the Peasants Henrik Paldanius and

Johan Andersson – exceptionally, no Burgher representative was present.

On this occasion, as well, the report from 1761 was followed up, but once

again with a radicalising addendum: the estates’ Minutes would also be

included in the ‘permissions’. Chydenius, whose handwritten Minutes sur-
vive, took the opportunity to insert his arguments in favour of disclosure of

Riksdag documents.\textsuperscript{37}

Thus, the Third Committee advocated even more extensive public ac-

cess to official documents than the 1761 report.

Having reached this stage, the Committee decided on 18 December,
in response to a question put by Chair Reuterholm, to refer what it had
achieved thus far to the Grand Deputation. A report, along with the first
part of the draft ordinance text, would be submitted and the Committee
would then await the decision of the estates before moving on. The report,
dated 18 December 1765, demonstrated by means of a historical background the damaging consequences of censorship such as it had thitherto been organised, but did not adopt a position on the censorship institution as such: the Committee avoided the issue of the existence, or not, of an office of the censor. The draft for Part 1 consisted of 18 articles. The first three enumerated the forbidden areas (the exceptions). The fourth article specified sanctions for violations of the prohibition articles and laid down the above-mentioned principle of allowing the printing of anything that was not expressly prohibited. The remainder of Part 1 listed the areas in which printing was specifically allowed in accordance with the Committee’s decision.

The report and the draft of Part 1 were further discussed and adjusted in February 1766, and were then submitted to the Grand Deputation with the clarification that the remaining parts, about censorship etc., would follow without delay once the estates had had their say.

The Grand Deputation devoted an entire meeting, on 7 April 1766, to the Third Committee’s proposal. As in the previous Riksdag, the discussion centred around a crucial issue, the printing of Riksdag documents. A heated debate broke out. On one occasion, both sides spoke at the same time and it became impossible to record the Minutes, notary Tholander noted. The Chair, Lord Marshal Rudbeck, skilfully succeeded in managing the discussion – we shall return to his argumentation. The Deputation accepted that private motions, reports and Minutes could be printed freely, albeit with the concession to opponents that the regulation would not apply retroactively. In response to a question put by the Chair, the Third Committee’s proposal could thus be approved. Rudbeck further proposed, again to approval, that the decision would not be executed until the Committee had submitted its draft regarding censorship.

Thus, the Principle of Public Access to Official Documents was in the bag – including the right to print Riksdag documents. Still, the issue of censorship remained for the Third Committee to discuss, and was debated on 21 April, two weeks after the Grand Deputation’s meeting. The answer was far from given. Both Nordencrantz and the 1761 report assumed that censorship would remain. Chair Reuterholm was absent from the meeting, and his place was taken by the radical Baron von Kochen. Bishop Mennander was also absent. But censor Oelreich, whose own office was at stake, used his right to attend – and the meeting turned into a duel between him and Chydenius, the latter to some extent seconded by Burgomaster Miltopaues. Chydenius later referred to his ‘tussle with Oelreich’. Both combatants argued their case eloquently, and when Chair von Kochen voiced the question ‘Does the most honourable Committee consent to the cessation of all censorship?’ the vote was almost evenly split. The
Burghers and Peasantry voted in favour. Among the Nobles, the naysayers won by two votes (Nordenflycht of the Chancery College, Silfversparre) to one (von Kochen). The Clergy’s two representatives were split. According to the somewhat confused minutes, Dean Forssenius agreed with the Nobles regarding theological texts, but with the other estates regarding everything else, while Chydenius supported the proposal in ‘its entirety’. In other words, Forssenius wanted to maintain theological censorship, while Chydenius wanted to abolish all censorship. The Clergy was thus stuck in a stalemate, one against one. The Burghers and Peasantry defeated the Nobility by two votes to one, and a decision on abolishing censorship could be taken in accordance with the proposal. Chydenius wrote a report dated the same day as the meeting, 21 April 1766, which was signed by Baron von Kochen, Dean Forssenius, Burgomaster De la Rose and Peasant Johan Andersson. But the margin of victory was minimal. 43

When the Third Committee reconvened on 16 May, Baron Reuterholm had returned from the countryside. Bishop Mennander was also back, and the Committee’s conservative members realised what had happened in their absence. An opposition group was formed. Nordenflycht and Silfversparre were unable to attend on this occasion, but had announced that they wanted to add their dissenting opinions to the record. They received support from Mennander and from Commandant Linderstedt, who had stayed away from the Committee’s last twelve meetings but must have been made aware of what was afoot. Chair Reuterholm advocated document disclosure but would not go so far as abolishing the office of the censor. He announced that he had himself begun ‘a draft for a separate communication’ which he intended to complete. 44 The Committee was thus faced with the paradoxical situation that its own report – written by Chydenius in accordance with the Minutes, now verified, of the Committee’s meeting on 21 April – was competing with a draft by the Chair of the Committee.

The situation was further complicated, according to the Minutes from 16 May, by the fact that the Committee had learned that Chydenius, despite the decision that all censorship was to cease, had kept theological censorship in his report. (In the preserved version of the report, however, there is no mention of theological censorship.) 45 The Committee agreed on a postponement. The two drafts – the Committee’s and the Chair’s respective proposals for a report and an ordinance text – would be completed and reviewed more closely, and a decision would be taken at the next meeting.

It was not until early July 1766 that the Third Committee resumed its work. A few days earlier, Chydenius had left the Riksdag. The two sides, censorship opponents and censorship supporters, continued working on their respective drafts during the remaining meetings (on 5, 7, 14 and 18
July). One problem for the censorship opponents was that they did not have the drafts for Parts 2 and 3, written by Chydenius who had now left the Committee. Burgomaster De la Rose therefore wrote new drafts of the two parts. On the support side, Nobles Silfversparre, Nordenflycht and Linderstedt and Bishop Mennander rallied behind Chair Reuterholm’s draft in a joint ‘special vote’. The material submitted to the Grand Deputation was voluminous: on the one hand the Committee’s report from 21 April and De la Rose’s proposals for Parts 2 and 3 of the ordinance; on the other the dissenters’ report and proposal for the same parts, written by Gustaf Reuterholm.46

The two drafts for Part 2 on censorship were diametrically opposed on the issue of pre-censorship. While De la Rose stipulated the abolition of the office of the censor, Reuterholm presented a complex and bureaucratic system for retaining censorship. The censor in Stockholm, renamed Censor Publicus and (as in Nordencrantz’s proposal) answerable to the estates, was to be assisted by censors around the country, and surveillance be carried out at different levels. De la Rose, for his part, included opportunities for subsequent verification: he proposed rules of judicial procedure for press freedom cases, as well as delayed distribution of publications on political and theological subjects.47 In Part 3, about printers and bookselling, the differences between the drafts were not as great. De la Rose borrowed from Reuterholm a proposal for some degree of deregulation of the printing business: printers were no longer to be subject to ‘the will of a guild or some Society’s constraint’. The word ‘Society’ was directed against the powerful trade association, Boktryckeri-Societeten (Society of Book Printers).48

On 7 August 1766, the press freedom issue was back on the Grand Deputation’s agenda. The Riksdag session was nearing its end, and the volume of records was already considerable. Chair Rudbeck managed to push through that the Minutes of the meeting, in the interests of avoiding prolixity, would only include the decisions on each point of discussion, albeit with the opportunity for members to append written opinions of dissent. The Minutes, therefore, is brief. They state that the drafts from both sides – the Third Committee’s majority and the dissenters – were read out. The discussion that followed led to the Chair voicing the proposition ‘that all censorship henceforth cease’, which was approved. The incumbent censor, Oelreich, would nonetheless retain his salary until he died or was promoted. The censorship opponents had won, in other words, and it does not seem unlikely that the reading of Reuterholm’s draft – a verbose text covering 42 closely written pages, which if implemented would have led to more rather than less surveillance – contributed to the defeat of the censorship supporters.49 Chair Rudbeck, concerned about conciseness and efficiency,
Caricature of the pugnacious professor and university librarian Niclas von Oelreich who, in 1746, was appointed censor librorum (censor of books). He was given to falling into disputes with other civil service departments, his colleagues and superiors. National Library of Sweden.
managed to push through a further decision. The division of the ordinance in three parts was inappropriate: the text of the law should be drafted ‘in summary and without any separate parts’. Thus, a rearrangement of the text was to be carried out, ‘without alteration of the essence of the Deputation’s previous decision’, before it was dispatched to the estates.\footnote{50}

One editing phase now remained in which the approved proposals from the Third Committee – two reports and an ordinance text in three parts comprising 42 articles – were to be abridged before being submitted to the estates for a final decision. This task was entrusted to a working group of representatives from the four estates, which met on 20 September 1766. The two reports were reduced to a single, brief text. For the text of the ordinance, the working group used the Third Committee’s proposal for Part 1 as well as a draft written by the Secretary of the Grand Committee. From the Third Committee’s Part 1 it lifted the basic division into ‘exceptions’ and ‘permissions’, and the articles on permitted publications – which became Articles 6–13 in the definitive ordinance. The legislation on Public Access to Official Documents in the 1766 Freedom of the Press Act thus comes directly from the Third Committee.\footnote{51}

The first five articles in the Grand Deputation’s proposal, and in the definitive ordinance, were based on the Secretary’s draft. Just as in De la Rose’s Part 2, the office of the censor and supervision by the Chancery College were abolished, and the responsibility for printed publications placed on authors and printers (Freedom of the Press Act, the preamble). Other than that, there are few remnants of Parts 2 and 3: the proposed judicial procedure for press freedom cases was simplified and the idea of delayed distribution of certain publications was abandoned; the intended reorganisation of the printing trade was also scratched. Additions made during the editing stage included sharpening the punishment for insults against the estates: instead of fines, capital punishment or ‘other severe corporal punishment’, a way of protecting the power sphere of the Riksdag (Freedom of the Press Act, Article 3).\footnote{52} Another novelty was the requirement that manuscripts on theological subjects had to be approved by the nearest consistory – an addendum which had been pushed through by the Clergy (Freedom of the Press Act, Article 1) and a matter we will return to below. An addendum that actually strengthened press freedom was the concluding provision about ‘the guaranteed continuance of the freedom of writing and of the press described here and provided by an unalterable Constitution’ (Freedom of the Press Act, Article 14).\footnote{53}

Towards the end of September 1766, the Grand Deputation’s proposals were finally ready to be submitted to the estates. The Clergy, Burghers and Peasantry adopted the proposed ordinance with only minor adjustments.
The Clergy had pushed through its central issue, on censorship of theological texts; and the Burghers and Peasantry had supported press freedom all along. The Nobility, however, rejected the proposal on two crucial points: the issue of disclosure of Riksdag documents, or more precisely the right to print Minutes and votes from the estates, the Secret Committee and other Committees, as well as the provision that the ordinance was to have constitutional status. The driving force behind this, as before, was Commandant Linderstedt, along with the leader of the Hats, Axel Fersen the Elder. However, as these two points had already been approved by the three lower Estates, the Nobility was defeated. The Freedom of the Press Act was promulgated by the King in Council on 2 December 1766, after the end of the Riksdag.  

Controversial issues and arguments

The 1766 Freedom of the Press Act introduced the Principle of Public Access to Official Documents for the first time anywhere in the world. Pre-censorship was abolished at the same time, albeit with the exception of theological censorship. This section will analyse the controversial issues and how the arguments were framed in the Riksdag debates of 1760-62 and 1765–66.

The most pioneering feature of the 1766 Freedom of the Press Act, from the perspective of our own era, is the Principle of Public Access to Official Documents, i.e. the citizens’ right to print documents generated by the authorities. Oddly enough, that principle itself is not the subject of debate in the preserved records from the two Riksdags. A discussion was most probably held in 1761 in the Press Freedom Committee, as it proposed extensive disclosure of documents, but the Committee’s Minutes have been lost. In existing sources, the issue is not about whether documents from public authorities should be allowed to be made public, but which types of documents should be covered by such permission. It appears as if Nordenctrantz’s memorial from 1759 and the widespread discontent with Hat rule led to an acceptance of the demand for insight into the activities of public authorities. A first step towards public access had already been taken in the 1730s, when printing of judicial documents became permitted. In practice, the estates published a number of their documents during the 1760-62 Riksdag. It may be noted that no distinction was made in terms of principle between ‘press freedom’ and what we today call ‘the Principle of Public Access to Official Documents’. In both cases, expressions such as ‘free to be printed’ and ‘printing permitted’ were used.
1765 Dec 14: Han Sållas Sederiferande & de Äfver Riksdagen inne i hans hus ocli.

L. Reuterholm.
Cam. P. E. Kochen.
Fr. Forsénus.
Com. Chydenius.

Dem polykanic.
Dagen återstrax.

Fallet ut.

I regeringsssaken omnmit finns blandt

protokoll och på att äfven ingen risk i sjuk

samt dispositionernes blanka. Såväl

från protokoll med stavända. Honors

protokoll förmoden med stavända. Honors

inget lade som den lade på talvallan. Dä-

att det en må digna baner deres och att

ända ungar att ingen lång runa. Det får och

Ding vagnar att den ett talvendt. Honors

elad och demning angivande sammansamhet.

flera blåckligen skall. Det är.

Dr. Gustafs och Esens

detta blanda in med stavända. Honors

fuller ungar att ett talvandt. Dä-

ne utföra den andra

kontroll på då han till som bort

och detta att andra

uppsatt under

Sjöpolars samma som ägna sig till.

1765 Dec 14.

O. E. Kochen.


M. Henning.

Blyförrättar.

Rechter.

Skulpus.

Polykanic.

T. Norden.

Chydenius.
Regarding the types of documents that it would be permitted to print, the estates’ own documents were, as we have seen, the focus of discussions in both Riksdags. A central argument from the opponents, from the first meetings of the Grand Special Deputation in 1761 until the final debate in the House of the Nobility in the autumn of 1766, was that printing Riksdag Minutes would contravene the Constitution. The Riksdag Act, 1723 Article 22, and corresponding articles in the Instrument of Government and the Coronation Oath stipulate that Minutes from the estates, the Secret Committee and the Deputations may not be ‘to anyone divulged’, but should instead be ‘held in good and safe keeping at their localities’ (see above). Lord Marshal Rudbeck refuted the constitutional argument in April 1766, when the Grand Deputation debated the Third Committee’s proposal. Rudbeck distinguished between the material documents, ‘the originals’, which under the Constitution must be held in good and safe keeping at their localities, and the ‘printing of them’ (distribution of their cognitive content, in our era’s manner of expression), which should be permitted. Rudbeck managed to get the majority on his side.

For a compilation of common arguments on the supporter side, we can turn to the Minutes kept by Chydenius at the meeting of the Third Committee on 11 December 1765, when the right to print the estate Minutes was discussed. Chydenius begins with what we might call the ethical argument: ‘No member [of the estates] is likely to speak or reason in a way that he would not want to be known for among the public, as nothing more distinguishes an upstanding member of the Riksdag than having his thoughts become known, and nothing better keeps the otherwise minded within the bounds of justice.’ He continues by referring briefly to practices in another country: ‘NB: The example of England.’ There follows the pedagogical argument – future Riksdag members can learn from the printed debates: ‘This also creates suitable Riksdag members without them being in the Riksdag.’ The final argument is about responsibility: printing of the estate minutes ‘is the only means of checking that the government is pursuing its voters’ and the realm’s best interests, as no responsibility may otherwise be ascribed to those that constitute the supreme power’.

The final point in Chydenius’s Minutes – the issue of responsibility – was at the very core of the debate about disclosure of Riksdag documents. Printing of the estate Minutes, the Curate maintains, is the only way for the electorate to exercise some means of supervision of and impose accountability on their governors in the Riksdag, the highest power in the realm. A key word for Chydenius – as for his teacher, Nordencrantz – was ‘control’. His statement goes directly against a fundamental principle of the Hat regime’s doctrine that the estates alone are ‘holders of power’, that
‘the estates of the realm are to be regarded as the nation itself’ (the quote is from a text by Carl Fredrik Scheffer, a Hat ideologue, written for the education of the heir to the throne). The doctrine that the voters should be viewed as ‘principals’ (principaler or committenter) and the members of the Riksdag as their agents – known as the principalat doctrine – had, as mentioned earlier, been banned by the Hat government. What was stigmatised in the 1740s was the requirement that the voters’ instructions should be binding on their representatives – this was referred to as the imperative mandate. Discussions in the 1760s were about voters gaining insight into the work that Riksdag members did, through the publication of Minutes. This amounted to a sideways shift, which was not conceptualised in the debate.\(^{58}\)

In the course of the 1760–62 Riksdag, when the Hats were still in power, they used the odious ‘principals doctrine’ as an argument with which to discredit their opponents. ‘[I]t would be the end of the entire Constitution, the end of King, Council, estates and realm, were the populace to rule’, exclaimed Burgomaster Renhorn, who wanted the report from the Grand Special Deputation to expressly forbid the principalat matter. His party colleague, von Frese, expressed horror in the House of the Nobility at the notion of ‘letting what is said here be laid before the public’s judgement, perhaps at inns, in taverns, on street corners and in other places’; this would be to create a ‘statum in statu’, a state within the state.\(^{59}\) The proponents of public access to official documents tried to distance themselves from the accusation of principalat thinking, and argued for the benefits of the proposal. Ridderstolpe, a lawyer, argued for instance that the members of the Riksdag were free of liability before their ‘home voters’, but that the knowledge of their actions would serve as guidance for the next elections to the Riksdag, when the people appointed ‘them or others as their agents’.\(^{60}\)

The issue of liability was connected with the view of ‘the public’, a term (allmänheten) that occurs in Chydenius’s Minutes (‘known for among the public’) as well as in the statement by von Frese quoted above. Views differed diametrically between the two camps. This is Baron von Kochen in the Grand Special Deputation in 1761: ‘The public is an enlightened judge, an impartial judge, and never makes its decisions on such loose grounds.’ And here is Lord Marshal Fersen on the same day: ‘The public consists of a multitude of feeble-minded persons who are not possessed of sufficient discernment for the examining of the affairs of the realm.’\(^{61}\) During the 1765–66 Riksdag, ‘the public’ and ‘brothers at home’ were alternately cited by Chydenius and his allies as arbiters. Against the traditional élite’s view of the populace as simple-minded was pitted the new élites’ re-evaluation of the public’s capacity for discernment.
England was a standard example invoked in the battle over the printing of Riksdag documents – so familiar that Chydenius in his minutes could note simply the ‘example of England’. The source of this, for proponents as well as opponents, was evidently the information in Nordenkrantz’s 1759 memorial that English parliamentary debates were published in printed collections and reproduced in newspapers (these claims had limited support in reality). For the Hat camp, it was a case of bringing down the English example. What is customary in England is not appropriate in this country, was a common refrain. The validity of the example itself was also questioned: in England they had realised the damaging consequences of printing parliamentary debates and had already ended this practice several years ago, maintained Jennings, a Hat, in the House of the Nobility. Examples from history were also mobilised in the fight. While the Cap leader, Rudbeck, in 1761 painted a picture of how our forefathers’ ‘Allhärjar-Ting’ (‘assemblies of the whole host’) were held under the open sky in the presence of the people, the Hat leader, Fersen, paid tribute to the estates’ custom, between 1719 and 1734, of setting fire to their minutes at the end of a Riksdag.

A recurrent argument on the opponents’ side, finally, was the protection of individual Riksdag members. They should not have to be pilloried in public for a rash opinion, ‘as if by a form of public punishment’. This reasoning was countered with the statement that honourable Riksdag members had nothing to hide – the ethical argument we saw in Chydenius’s Minutes. Once again, the impulse probably came from Nordenkrantz’s 1759 memorial. His excerpt from a debate in the English lower house, about the printing of its own Minutes and votes, includes the words: ‘This House will be no more ashamed of their actions, than the last was.’ Dean Alin expressed the matter pithily in 1761: that ‘truth never shuns the light’. Disclosure, insisted the proponents, creates trust and avoids sowing suspicion among the public.

While the battle over the disclosure of Riksdag documents continued throughout the two Riksdags, censorship was not, as we have seen, a contentious issue in 1760–62. When the press freedom matter was raised early in the 1765 Riksdag by three private motions, two of the proposals – Cederström’s and Schönberg’s – took it for granted that the office of the censor would be kept. The real author of the third motion, Anders Chydenius, was alone in advocating the abolition of the office, but he nevertheless reasoned in terms of ‘censorship’ and wanted to shift this from the censor to the printers. It was not until the spring of 1766 that the lifting of censorship became a burning political issue, and the driving force behind this was, as Finnish researchers have pointed out, Curate Chydenius.
When Chydenius wrote the minutes of the meeting on whether Riksdag documents should be printed, he could summon the support of an entire tradition of arguments. When it came to the abolition of censorship, however, there were no precedents in Swedish Riksdag debates. The available example was, once again, the English one – here the alleged wish of the English censor, Maboth (actually Mabbott), to abolish his own office was a rich seam to mine, this time taken from a later publication by Nordencrantz. Chydenius used Maboth in his big duel with censor Oelreich on 21 April 1766 – a debate that made clear the dividing line between moderate press freedom advocates, who held on to political pre-censorship, and the radical Curate. 67 Below are a few main points made by the two speakers.

Oelreich argued for a reformed and enlightened office of the censor. There would no longer be any risk of arbitrariness on the part of the office holder once the new ordinance laid down the limits of what was permitted to print. The office had a positive function – to promote and protect culture, we would say today. The censor was to ‘seek out and cultivate writers’, guide them towards worthy subjects and ‘imperceptibly’ steer them away from perilous ones. The fact that responsibility for printed publications lay with the censor provided security for printers and writers, who need not fear any legal repercussions from their works. (Oelreich here used England as a deterrent example). With his professional skill and experience, the officeholder was well equipped to discern dangerous passages in publications. 68 The censor, now with the added distinction ‘regius’, royal, would have a seat and vote in the Chancery College, hold the rank of Court Chancellor and be assisted by sub-censors. He would be ‘given open access’ to the Council, the high courts and other authorities in order to obtain the necessary knowledge about public matters from them, and to be able to request the printing of documents that contributed to ‘public enlightenment’; in order to facilitate these tasks, registers should be drawn up of documents in each archive. The censor would also be the Chair of the Society of Book Printers. 69

Chydenius refuted Oelreich’s argumentation point by point. His counter-arguments can be found in the Minutes from 21 April 1766 and the Third Committee's report on censorship – penned by him – from the same day. Oelreich’s image of an enlightened, paternalistic censor is subjected to an analysis of power relations. The ‘great power and authority’ proposed for the censor would strengthen the position of the office, and ‘the coercion’ would be transferred from an entire college to a single individual. A person of ‘such high and authoritative’ standing would be susceptible to pressure from ‘the ministries’ – the Government – and any injured party would have scarce opportunities for redress. Chydenius knew from experience, he said, ‘how hard it be when the great and mighty are to be punished’.

Better for writers and printers to be answerable themselves than to be dependent on the wilfulness of one man. Writers would also avoid the delay and cost that censorship implied. Anyone who violated the prohibition articles of the Ordinance would be brought before the first court at the location, and the judicial procedure would be the normal one. Against the notion that the censor would guide writers towards worthy subjects, Chydenius posited the image of a free exchange of ideas ‘both more numerous and freer in kind as well as nature’. Regarding the censor’s proposed role as conveyor of documents from archives, the Curate’s view was that such a function was unnecessary. As long as the archives were ‘in disarray’, neither the censor nor anyone else would find anything in the prevailing chaos. What was needed were proper ‘material registers’. In summary: ‘Censorship, both useless and dangerous, should be abolished once and for all’.

While the office of the censor was discontinued in the Freedom of the Press Act of 1766, pre-censorship of publications on theological matters remained. This issue played a secondary role in the discussions during the two Riksdags. It is likely that theological censorship was taken for granted by many. It was invoked by Dean Forssenius during the vote in the Third Committee on 21 April 1766, and maintained in Gustaf Reuterhom’s counter-proposal for the ordinance text. Chydenius, who was himself a man of the Church, appears to have wavered during the Riksdag. The Grand Deputation approved, as we have seen, Chair Rudbeck’s proposal that ‘all censorship’ be ended. During the final editing phase, no material alterations were to be made to the decisions taken. However, Bishop Filenius and a couple of others added a reservation to the Minutes demanding continued theological censorship. Filenius repeated his demand when the Deputation appointed the working group which was to draft the proposal for the wording of the Ordinance. During the final edit, the Clergy mem-
bers were able to push through an addendum on maintaining scrutiny of theological publications. Such was the power that Lutheran orthodoxy held in Sweden.

What made victory possible?

The press freedom debates during the 1760–62 Riksdag led to an aborted proposal, while the 1765–66 Riksdag ended with a victory for press freedom. How do we explain the adoption in Sweden of such a radical text as the Freedom of the Press Act of 1766?

First and foremost, we might adduce the institutional conditions. The press freedom issue was dealt with at both Riksdags in forums where the four estates were represented and each held one vote, i.e. the Grand Committees and their subordinate bodies, and the estates’ plenaries. At the 1760–62 Riksdag, the established power élite still dominated both the Nobility and the Burghers. But with the entry into the Riksdag in 1765 of the radical Caps, the lower estates took on a new role. The fact that Chydenius could be elected a member of the Riksdag was due to curates – subordinate clergymen – having had the right, since 1727, to appoint representatives. Chydenius describes in his autobiography from 1780 that he could not influence ‘the greatest and most enlightened members’ of the Third Committee, but that he turned to the members from the Burghers and Peasantry and ‘persuaded them comprehensively to be at one with me’. In our current parlance: he networked with the lower estates.

The decision-making procedure giving one vote each to the estates made it possible for the lower estates to defeat the Nobility on two crucial occasions: first, in the vote on censorship held in the Third Committee in the spring of 1766, when Burghers and Peasantry went against the Nobility while the Clergy was in stalemate due to Bishop Mennander’s absence; and second, in the final stages of the estates’ plenaries in the autumn of 1766, when the Nobility’s rejection of disclosure of Riksdag Minutes and constitutional protection for the Ordinance was powerless against the approval of the three lower estates. The decision-making procedure meant that it was important for the various estates’ representatives to be present at the meetings. Attendance lists in the Third Committee Minutes show that the Peasantry were the most assiduous participants, with an average of 71 per cent attendance per person. The corresponding figure for the censorship supporters among the Nobility (Chair Reuterholm excluded) was 32 per cent. Chamberlain Wachschlager limited himself to attending two meetings out of 21.
A central actor during the 1765–66 Riksdag, until he was dismissed from his mandate in early July 1766, was the Finnish Curate Chydenius. His efforts were decisive for the Third Committee’s proposal to abolish censorship, and he was probably the person behind the radicalisation of disclosure legislation to include documents from the Council and the estate Minutes as well. He was capable of rising above day-to-day party politics and dealing with issues of principle. His perspective was that of the ordinary citizen against the powers-that-be. He had a vision for a different, non-hierarchical society in which ideas could be freely confronted with each other and the truth could thus emerge. But Chydenius was also a superior rhetorician, clear in his delivery and assured in his style, with the ability both to revisit earlier arguments and to refute a proposal, point by point. He hammered home slogans such as ‘the nation’s liberty’ and press freedom as ‘the apple of liberty’s eye’. He took dramatic initiatives. When the Grand Deputation was debating the right to print Riksdag Minutes, he read out an excerpt from a defence of this right written during the previous Riksdag by the leader of the opposition, now Lord Marshal Rudbeck, and then addressed him directly: ‘Now the staff is in the same valued hand.’ He also turned directly to Oelreich in the Third Committee, urging him to follow the English censor, Maboth, and relinquish his office voluntarily.

Still, Chydenius’s role must not be over-emphasised. For one thing, he was able to build on the foundation of the previous Riksdag proposal for public access to official documents. And for another, he was no longer there when the decision on censorship was made in the Grand Deputation, and when the proposal for the definitive wording of the Ordinance was hammered out. And there were furthermore other, since-forgotten actors who played their roles in 1765–66, even while Chydenius was still involved. The Freedom of the Press Act was brought into existence by a collective effort. Without the Peasantry’s faithful presence in the Third Committee – most conscientious among them was Johan Andersson from Uppland, who attended 81 per cent of the meetings – the proposal for abolishing censorship would never have gone through. There are very occasional notes in the Minutes on contributions by the Peasantry, e.g. the exclamation in the Grand Deputation by Jonas Bengtsson from Småland, about the disclosure of Riksdag documents: ‘Please it God and the whole world that everything be known that he [Jonas Bengtsson] has said in every Riksdag past.’ Burgenmaster Miltopaeus from Ekenäs supported Chydenius’s flank in the debate with Oelreich, and the law-learned Burgomaster de la Rose wrote a proposal for the text of the Ordinance at a critical stage. Reform-friendly nobles holding the Chair helped push through decisions in the Third Committee – Baron von Kochen at the meeting on censorship – and in the
A brief period of press freedom

The Freedom of the Press Act led to explosive growth in the area of printed media. Newspapers, political periodicals, pamphlets and public documents poured onto the market. It was a golden era for Swedish printers. Three new printing houses were established in Stockholm. The capital got its first daily newspaper in 1769, *Dagligt Allehanda*, a product from the dynamic Momma firm; this was after London but before Paris (‘daily’ meant it was published six days a week). Between 1720 and 1766 about 70 periodicals were published in Sweden; between 1767 and 1774 there were over 100. Even more striking are the statistics for political pamphlets: around 70 per cent of those published between 1700 and 1809 are from the period 1766–74. Public documents, e.g. records from trials, were also popular reading matter; Ingemar Oscarsson speaks aptly of ‘a transparency that sold’. Publishing public documents under the Freedom of the Press Act 1766 was also a safe bet for printers, as it carried no risk of the indictments that political pamphlets could bring.
Press freedom, we must remember, was not absolute. The Freedom of the Press Act opened up for subsequent verification: the author was legally accountable or, in the case of anonymous publications, the printer was – unless a name slip could be provided with information about the author. What is more, theological censorship continued, as did the control of imported books. Actions by the authorities against objectionable publications did not end with the Caps’ assumption of power. The weapon that they had pushed through against Hat opposition could now be turned on them instead. The Cap Government intervened when, in 1767, Inrikes Tidningar published a news item about problems in the country’s herring fishery: it might harm foreign trade. There are indications that the Council tried to obstruct the publication of public documents, e.g. by setting high level fees for copies and extracts.

Despite these restrictions, a political discussion in printed form developed between 1767 and Gustav III’s coup d’état in 1772 as never before in Sweden. It was a period of pointed conflict and regular changes of government: Hats stood against Caps, royalists against advocates of parliamentary power, nobility against commoners. All camps made use of the printed word. In pamphlets and newspapers, the three commoners’ estates questioned the privileges of the nobility – primarily its exclusive rights to higher civil and military office. The battle over privileges would dominate the political agenda during the final years of the Age of Liberty, while at the same time the debate became more radicalised. A 1771 pamphlet, Den Ofrälse Soldaten (‘The Common Soldier’) whipped up outrage and indignation at the cruel treatment of ordinary soldiers by officers of the nobility. Around the end of 1771, Dagligt Allehanda was engaging in rapid-fire reporting, from one day to the next, on the latest developments in the Riksdag. Political information came thick and fast as never before, and political debate
included a multitude of voices, not least from the new, well-educated élites that were beginning to be called ‘middle estate’ and would eventually be identified as ‘middle class’.82

Press freedom throttled

‘Darkness over Gustav’s era’ is Ingemar Oscarsson’s title for the section about the rule of Gustav III in Den svenska pressens historia (‘A history of the Swedish press’). This may sound paradoxical, bearing in mind the cultural institutions founded by the King – the Royal Opera in Stockholm, the Swedish Academy, the Dramatic Theatre. And indeed, there was a cultural flowering under Gustav III, but it was a flowering very much on the terms set by the Gustavian monarchy. The young regent who brought back a strong monarchy by means of a coup d’état in 1772 was acutely aware of what we today call the media. In speeches and poetry, in the press and from the opera stage, the royalist message rang out, with leitmotifs such as ‘the Third Gustav’ (after Gustav Vasa and Gustav II Adolph) and ‘freedom’ versus ‘license’. Writers and artists were protected, but were expected to adhere to the ideological orthodoxy.83

It was not difficult for Gustav III to point to the divisions, the ‘discord’, during the final years of the Age of Liberty. He could not but disapprove of the Freedom of the Press Act of 1766. In 1774 he introduced a new Freedom of the Press Act, without the participation of either Council or Riksdag. He cast it as a model of enlightenment, sent it to Voltaire in Paris and later had a medal struck to commemorate it. In fact, the Freedom of the Press Act 1774 imposed restrictions on crucial aspects of press freedom. Vague wordings could be used to hobble critics of the Constitution or of the highest leadership. The legal accountability of printers increased. From the legislation on public access to official documents there remained the right to print documents from public authorities and courts (it was tactically opportune for the King to shepherd the public’s distrust in the direction of public officials and judges), but the publication of Council Minutes was reduced to include only judicial matters. The section in the Freedom of the Press Act 1766 about permission to print Riksdag documents was removed, but an explicit prohibition on this matter was not contemplated, and thus there arose a loophole in the new Ordinance.84

Production of political printed matter dropped dramatically after the 1772 coup. Such attempts at opposition as there were led to further restrictions. In 1780 printers were made legally accountable for the publications they printed; in practice, this amounted to censorship by the printers. Five
years later, in 1785, printers received the exclusive right to publish daily papers as well as monthly and weekly periodicals – but these had to have obtained a privilege, which dealt a severe blow to the press. At the same time, theatre censorship was introduced and hit Munkbroteatern in Stockholm particularly hard – it was a private theatre led by a singer, Carl Stenborg. It is likely that Beaumarchais’s impudent comedy, *The Marriage of Figaro*, was banned in connection with the imposition of censorship. The advertised first performance in Swedish, at Munkbroteatern, never took place.

Opposition figures in Gustav III’s Sweden used various strategies. Criticism was occasionally voiced in the daily press, such as an article against the monopoly on distilled drinks by Johan Gustaf Halldin, published in 1779 in the newly founded *Stockholms Posten* and promptly the subject of legal proceedings. Until the privilege requirement for newspapers in 1785 there were occasional opposition journals, including Josias Cederhielm’s *Sanning och nöje* (‘Truth and Amusement’) and *Wälsignade Tryck-Frihet-en* (‘Blessed Press Freedom’), edited by Major Pehr af Lund – see Carina Burman’s contribution to the present volume. When one newspaper casti-
gated Nero’s and Caligula’s mania for theatre and rule by favouritism, the parallel with the current Swedish regent was all too clear, but at the same time an indictment was tricky: it would have been a treasonable crime to suggest a similarity between ancient tyrants and the Swedish King. Another method, which became increasingly important as the years passed, was to write libellous pamphlets by hand which were circulated clandestinely. These could be fairly good-natured in the 1770s, but became increasingly caustic as the political climate hardened. The King was called a tyrant, a traitor against the realm, a voluptuary, a grand buffoon. A third strategy was to make use of the loophole in the Freedom of the Press Act of 1774 regarding the publication of Riksdag documents. The Nobility, which in 1766 had opposed printing of the estate minutes, used precisely this method during the 1786 Riksdag to spread oppositional points of view.

In February of 1789 Gustav III carried out a second coup d’état, with the lower estates supporting him against the Nobility. He was now an absolute ruler. In the summer of the same year, a revolution broke out in Paris, and fears of a similar development in Sweden grew among those in power. In 1790 and 1791 prohibitions were promulgated on mentioning ‘the French events’ in print. When the King was assassinated in his own opera house in March 1792, political freedom of the press had been stamped out in Sweden. The Gustavian regime was nevertheless a fairly mild dictatorship in comparison with totalitarian systems of our era. The above-mentioned Halldin may have been sentenced to death, but he was pardoned and transformed himself into a royal propagandist. Writers were often bribed or scared into silence. No-one in Gustav III’s Sweden lost their life due to a violation of press freedom regulations.

* Four years after it had been introduced in Sweden, press freedom was imposed in Denmark-Norway. The decision was made by a man with Enlightenment ideals, the kingdom’s strong man, Johann Friedrich Struensee – and when he was deposed in 1773, so was press freedom. While the Danish legislation was in the form of a decree from on high, the Swedish legislation grew from below. In connection with the 1760-62 Riksdag, demands were made for greater insight into the workings of the autocratic state machinery created by the Hat Party. The principle of accountability before the electorate was linked to the freedom to print documents and thus give the citizens information about the authorities’ exercise of power. Once the Caps had defeated the Hats in the 1765-66 Riksdag, these ideas could become reality. The institutional conditions in the Riksdag, with one vote for each of the four estates, made it possible for the radical Caps
to push through the Principle of Public Access to Official Documents, including the right to print Riksdag documents and the abolition of secular pre-censorship. The Curate from Nedervetil in Finland, Anders Chydenius, played a significant role in this context.

The Swedish Ordinance led to an explosion of printed media. However, Gustav III’s coup d’état in 1772 put an end to these developments, and press freedom was gradually throttled during the course of his regime. By the time the King’s mother, Ulrika Lovisa, died in 1782, Sweden had become more normal from a European perspective. The realm was ruled by a powerful King, and pre-censorship had effectively been reintroduced. But press freedom and the Principle of Public Access to Official Documents were ideas whose time would come.

Queen Lovisa Ulrika.
Notes

2 For a general presentation see e.g. S. Carlsson 1973, Frohnert 1985. The Peasantry made up about half of the total population, the Nobility less than 0.5 per cent, the Clergy just under 1 per cent and the Burghers about 2 per cent – Carlsson 1973, pp. 17–18.
4 See e.g. Lagerroth 1934; Roberts 1986; Metcalf 1987; Nordin 2003. About principalatsläran: e.g. Lagerroth 1934, pp. 152–154, 157–162; Nordin 2003, p. 60, and Nordin 2015, p. 23.
6 Instruction for censor librorum in the 1720 chancery regulation, Samling 1856, p 403 (quote); Oscarsson 2000, pp. 137–138; Nordin 2015, p. 16.
8 Benzelstjerna 1884, p. 242 (16 June 1744), cf Åhlén 1986, p. 72; for further examples, see Åhlén's overview.
9 See e.g. Sylwan 1893; Roberts 1986, p. 152; Åhlén 1986, pp. 88–91; Oscarsson 2000, pp. 139–140.
11 Herrnhutare (Moravian Brethren): see Öhrberg 2011.
12 Nordencrantz 1759. On Anders Nordencrantz, see Lars Magnusson's contribution to this volume and literature referenced there.

Minutes from 16 and 20 January 1761 (decision p. 46), and Rudbeck’s pronouncement 20 January 1761 (Annexes, pp. 15–18), in Manuscriptsamli. vol 208, RA.

Minutes from 23 April 1761. Cf Kjellin 1952, p. 42.

The report (13 May 1761, in R 3405, folios 438–445, RA) quoted from Palmén 1880, p. xciv–c; on printing of official documents, p. xcvi–xcvii. See Eek 1943, p. 199, and Manninen 2006, pp. 46–49 (one should note, though, that the document was a proposal for a report, not a private member’s motion from Schönberg).


Pechlin: private member’s motion December 1760, p. 80 (see above n. 17) and Grand Special Deputation, minutes from 23 April 1761, p. 131. Harald Jönsson: Grand Special Deputation, minutes from 16 January 1761, p. 18.


Eberhardt 1765, see Skuncke 1999, p. 288.

A fundamental exposition of the press freedom issue at the 1765–66 Riksdag, with extensive commentary and quotes, is in Palmén 1880, p. xc–xcxvii; the focus is on Chydenius. Later analyses: Eek 1943 pp. 203–214; Burius 1984, pp. 262–277; Melkersson 1997, pp. 125–130; Virrankoski 1995, pp. 179–196; Manninen 2006, pp. 44–52; Henrik Kniff’s comments in Chydenius SS, particularly vol. 2 pp. 296–300; Forsgård 2014, pp. 131–160; Nordin 2015, pp. 24–27. References to earlier researchers are provided in the following analysis of the 1765–66 Riksdag when the account is based on their contributions.


Members of the Third Committee: minutes from 26 August 1765, R 3404, folio 119. G. G. Reuterholm: above, n. 23, and minutes from 29 March 1765, R 3404, cf Palmén 1880, p. cii.

The Third Committee’s documents: minutes in R 3405, RA; annexes that stayed in the Committee are found at the end of R 3405, annexes that were passed on to the Grand Deputation at the end of R 3404. Attendance lists can be found at the beginning of the minutes for each meeting.

Minutes from 29 August 1765 (the Riksdag 1760–62; on Chydenius’ quotes from Rudbeck see below, n. 76); 29 October and 4 November (earlier statutes); 12 November (private member’s motion 1765).

‘Parts’: the Swedish term is ‘Artiklar’. Minutes from 20 November 1765, quote folio 363v, and proposals for Parts 1, 2–3 in R 3404, see below.


Minutes from 22 November (quote folio 365r), 27 November, 9 December (about the Council, folio 369r).
37 Minutes from 11 December 1765, folio 371; Palmén 1880, p. cxiii.
38 Minutes from 18 December 1765 (Chydenius’s handwriting, with an annotation by notary Tholander). Report, same date, printed in Chydenius SS 2, pp. 214–221; H. Knif argues convincingly that Palmén’s attribution of the report to Chydenius cannot be proven, SS 2, Commentary, p. 296.
40 Minutes from 19 and 24 February 1766. Clarification: Chydenius SS 2, p. 221.
41 Minutes from 7 April 1766, R 3404.
44 Minutes from 16 May 1766, quote folio 390.
46 Minutes from 5, 7, 14, 18 July 1766. About Chydenius’s proposal for Parts 2–3 (apparently lost): minutes from 7 July 1766, folio 431. Annexes submitted to the Grand Deputation in R 3404, see below.
48 Part 3 (in Swedish ‘Artikel 3’), in annexes to R 3404: De la Rose, folios 764–767; Reuterholm, folios 788–794. Deregulation: Reuterholm, Article 1; De la Rose, Article 8, quote folio 766r.
50 Minutes 7 August, folio 230r.
52 The secretary’s draft, Preamble (Office of the Censor, Chancery College, liability), Article 3 (capital punishment), Article 4 (judicial procedure).
53 Theological censorship: The Grand Deputation, reservation recorded in the minutes from 7 August 1766, folios 230–231 (Bishop Filenius et al), and the minutes from 19 September 1766, folios 245–246 (Filenius). The working group’s minutes, 20 September 1766 (above, n. 51); the Grand Committee’s report, addendum in the margin, folio 796v; the secretary’s draft, the preamble, addendum by a different hand in the margin, folio 797r. Constitutional protection: Proposal for Part 1, Article 18, addendum in the margin, folio 814v. All in R 3404.
Press freedom in the Riksdag 1760–62 and 1765–66

56 Cf above, n. 3 (quote from RO 1723). E.g. Renhorn 1761 (private member’s motion on 20 January 1761, Manuskr. 208, RA, Annexes pp. 5–6); Linderstedt 1766 (RAP 1765–66, 14 October 1766, vol. 26 pp. 391–392).

57 7 April 1766, R 3404, folio 224v.

58 Liability in Chydenius: see Lagerroth 1934, p. 196. C. F. Scheffer, manuscript interpretation of Sweden’s fundamental laws, quoted from Lagerroth’s edition 1937, p. 188. On the principal issue, see above, n. 4, and Manninen 2006, p. 34. See also Nordin 2015, p. 26, on the ordinance about the execution of the laws adopted in November 1766.


60 Ridderstorpe, Grand Special Deputation, 29 May 1761, Manuskr. 208, RA, p. 169.


62 About Nordencrantz, see above, n. 15; about the actual situation in England, see Jonas Nordin’s contribution. Renhorn in Grand Special Deputation, 16 January 1761, Manuskr. 208, RA, p. 8. Jennings, 29 Januari 1762, RAP vol. 23, p. 44.

63 Grand Special Deputation 1761, Manuskr. 208, RA: Rudbeck 16 January, p. 10; Fersen 23 April, p. 139.

64 Protection of Riksdag members: I am grateful to Jonas Nordin for pointing this out. Grand Special Deputation 1761, Manuskr. 208, RA: Bishop Gadolin’s summary of the arguments for and against, 16 January, p. 19.

65 Nordencrantz 1759, p. 287; the quote is from the English original, A Collection of Debates 1725, p. 201. Alin in Grand Special Deputation, 23 April 1761, Manuskr. 208, RA, p. 134.


68 R 3405 folio 378r (quote), 379–380, 386.

69 Quote folio 378.

70 Quotes folio 381v, 382r.

71 Quotes folio 382v (ideas), 383r (archives), 387v (conclusion). See also the report of 21 April 1766 in Chydenius SS 2, with Knif’s comment pp. 297–298.

72 Chydenius’ attitude: see above, n. 45. The Grand Deputation, final editing: references in n. 53 above.


75 Cf Virrankoski 1995, pp. 409, 421 (view of society), Knif in Chydenius SS 1, pp. 373, 377 (self-correcting public sphere), Forsgård 2104, pp. 150–152.

76 Slogans: ‘The nation’s liberty’ e.g. in report, April 1766, Chydenius SS 2, pp. 288–289; ‘the apple of liberty’s eye’, id., p. 285, cf Manninen 2006, p. 39. Rudbeck: Chydenius in the Grand Deputation, 7 April 1766, R 3404, folio 218v, quotes

77 Jonas Bengtsson, 7 April 1766, R 3404, folio 221v.
78 See also Nygren 1998, pp. 10–11, on Gustaf Cederström’s private member’s motion.
79 Minutes in R 3405, folio 391r.
80 Skuncke 2003a; Bennich-Björkman 2003 (printers, pp. 299–304; safe bet, pp. 311–312); Oscarsson 2000 (Dagligt Allehanda, pp. 145–147; number of periodicals, p. 144; quote, p. 148); Nordin 2015 (statistics on pamphlets, p. 32).
82 Skuncke 2003a. See also Nordin 2000, pp. 390–418.
87 Oscarsson 2000, pp. 155–159; Boberg 1951, p. 179 (Nero, Caligula).
88 Mattsson 2010 (examples pp. 385–386).
89 Boberg 1951, pp. 238–246. The Nobility 1766/1786: I am grateful to Rolf Nygren for this observation. – See also Ihalainen & Sundin 2011, pp. 175–177.
“The time is past, when the value of things was estimated according to the darkness known to surround them.”

“[...] a Nation wandering in the darkness, not knowing the precipice until she meets it with its fall.”

Introduction

The period in Sweden from 1792 to 1809 is often called the ‘Iron Years’. It is named thus in allusion to the authoritarian state press ideology and the control of opinions that in many respects fettered socio-political debate after the death of Gustav III, first through the influence of Gustaf Adolf Reuterholm in the Regency Government (1792–1796) and then in the reign of Gustav IV Adolf (1796–1809). Properly speaking, Reuterholm began the period by pushing through a more open Freedom of the Press Act, inspired by ideas from the French Revolution. However, even in its own time, the Act was perceived as poorly thought out and poorly related to a Swedish context. Few were therefore surprised when Reuterholm, who rapidly discovered that the freer debate his Act made possible did not necessarily favour the interests of the Government, almost immediately eliminated the Act even though it would formally be in force until 1810. Among the more discussed cases in this context was the publication of Thomas Thörild’s *Om det allmänna förståndets frihet* (On the Freedom of Public Reason) in 1792, in which the author stated that a people could be forced to take up arms if their absolute
freedom of expression and of writing were not consecrated. After a rapid trial, Thorild was imprisoned and sentenced to four years of exile as a warning to other authors and book printers.³

The regime of Gustav IV Adolf signified a distancing from the politics of the regency period. But since Sweden continued to be marked by strong royal power, an autocratic system that had constitutional support in the 1772 Instrument of Government and the 1789 Union and Security Act, there was no place in the King’s world for freely debating citizens. The will of the monarch was to appear as the sovereign in Europe who represented a strong autocracy, the only political system that could guarantee the protection and care of its subjects; political and social conflicts of interest must be concealed. Apropos these conflicts, Mikael Alm points out in his research into the last Vasa king “that affecting them would be acknowledging them, and Gustav IV Adolf [chose] instead to silence them and deny their existence”.⁴ Gradually, censorship was strengthened against publication of commentary on both domestic and foreign policy, which led to a contraction of public discussion that would continue until the Swedish political revolution of 1809.

The political unrest on the European continent in the wake of the French Revolution and the advance of Napoleon, as well as the uncertainty about what this situation could signify on Sweden’s account, made Gustav IV Adolf uneasy and suspicious of every form of intellectual activity that defended the free formation of opinions and an open discussion of social issues.⁵ With that, he displayed an obvious inability to handle the civil challenges of the time. Book printers, booksellers, newspaper publishers and theatrical associations had to live with various monitoring practices and impending legal uncertainty. Even something such as a social gathering over a cup of coffee could constitute a danger to society, in the eyes of those in power.

No only was coffee a morally questionable imported commodity and therefore subject to fees under the sumptuary law; it was also a drink that encouraged conversation in smaller and larger groups, in public and semi-public contexts, and thus brought the risk of elements of social criticism. The consequences of the repressive and oppressive conduct of the monarchy have meant that the Iron Years were often described as some

Om det allmänna förståndets frihet, 1792. The National Library of Sweden.
of the more lacklustre years in Swedish cultural history. Historian Tore Frängsmyr is not alone in painting the period in dreary colours: “As regards science, it was largely dead; as regards literature and philosophy, it lay in the hands of pure arbitrariness.” Historian Lydia Wahlström speaks of a “deathly stillness over Sweden, broken only towards the end by the wretched news from our foolishly conducted war”.

This is, however, not the entire story. Even if the power of parliament was circumscribed, and freedom of the press and insight into political power was curtailed during the first decade of the nineteenth century there was, despite everything, an institutional memory of a more open climate, especially in the estates of parliament. The party battles and conflicts of interest of the Age of Liberty may have resulted in a political dead end, but they had also indicated the possibility of a political culture that permitted radical discussion on conceivable social orders in which citizenship was political, where merit came before inherited rights, and freedom of the press created a productive dynamic in the political arena. In addition, the period before the Iron Years saw a bourgeois general public mobilised in Sweden, with new forums for public communication in which words and concepts such as nation, state, power, benefit, subject, citizen, individual, general public, opinion, rights, audience, gender, and so on, were made the subject of debate. During the Iron Years, it was at times possible to activate the memory of this discussion and the practices that supported it.

In this chapter, I would like to focus on one such activation. I will be listening in on the discussion that took place around the turn of the nineteenth century about what we now call the ‘Principle of Public Access to Official Documents’. To be precise, this concerns the so called ‘publicity battle’ during the parliamentary session in Norrköping in 1800 – incidentally the only parliament Gustav IV Adolf summoned during his reign. Like “a bomb, [the issue of publicity] struck the camp, and quickly ignited all flammable material present” – this was how the beginning of the battle was described in a retrospective from the mid-1800s.

The military metaphor may perhaps promise a more heated discussion than was actually the case, but the parliamentary record shows that the issue was a watershed in the Swedish political landscape with regard to the attitude towards the benefit of, and limits for, public insight in relation to the best interests of the public, the citizenry, and the legitimacy of authority. The role of this principle in practical political work, and what today is called ‘public access to hearings’ and ‘public access to documents’, is also evident in the record, even if the terms as such did not yet exist. Many of the more progressive ideas put forth could, in a literal sense, only be made concrete as a result of the political revolution a decade later, but in line with
Johan Hirschfeldt I would like to believe that the interventions at the turn of the nineteenth century served as a kind of bridge for the central values that would come to belong to the Swedish constitutional inheritance. They played a role for the men who would design the 1809 Instrument of Government and the 1810 Freedom of the Press Act. Something that already distinguished Swedish legislation and praxis from other countries was precisely the emphasis on the right to insight into legislation and the activities of government authorities, about which Hirschfeldt writes:

It was not freedom of the press in itself that was important. This could be regarded as a necessary precondition to provide space, with the support of publicity, to influence the governance and development of the country. It is thus not actually freedom of thought and freedom of religion as such that are the central factors in this early Swedish concept, but the opportunity for review and public debate. Freedom of the press was thrown into the mix, so to speak.

There were several items of business on the Parliament’s agenda in 1800, such as the Innkeeper Ordinance, the Decree on Servants, Prisoner Transports, the Enclosure Obligation and the rules and regulations for legal ratification. It was, however, in relation to the issue of the Kingdom’s finances that the publicity battle flared up. It meant many members of parliament spoke with both brief interjections and long expositions of principle. The voices of opposition in the Estate of the Nobility – such as Baron Hans Hjerta, whose memorandum I will be presenting in more detail – were responsible for some of the more thoroughly-planned contributions.

The discussions in parliament were not isolated from the rest of society, however. It is therefore reasonable to lift our gaze a tad from the minutes, and see how the issue of publicity concerning the Kingdom’s finances was covered in other quarters such as *Läsning i blandade ämnen* (Readings in Diverse Subjects), a journal that moulded public opinion. It was published over four years at the turn of the nineteenth century (1796–1801) and had a reputation for offering readings on topics that would likely arouse heated discussion. Several writers of articles in the periodical took part in the deliberations in Parliament in 1800, including the editor, army Commander Georg Adlersparre. The fact that the periodical shut down a year after the parliament was linked to the more limited opportunities for free publication, but during its brief life it left a mark on the Swedish debate, especially in the social groups that found the organisation of state and society from the Great Power era (Stormaktstiden) did not correspond to the demands of the new period: reform-minded landowners, underpaid civil servants, younger officers and others.
On 14 March 1800, the Chairman of the Estate of the Nobility, His Excellency the Lord Marshal Count Magnus Fredric Brahe welcomed his fellow noblemen to Parliament: you are “called by a beloved King to meet His wise opinions with humble and well-intentioned advice”.\textsuperscript{17} Roughly the same thing was said in the other estates. The appeal certainly sounded familiar; it belonged to a monarchical tradition that the assembled members of parliament were well familiar with. But at the same time, the formulation undoubtedly grated on many ears. Swedish political experience and the recent American and French Revolutions had definitively shown that humble and well-intentioned advice was not necessarily in tune with the times. A loyal attitude in political work was passé for many, and even if the monarchical system as such was not questioned by the members of the parliament, ideas were circulating that did not equate subjects with citizens.\textsuperscript{18} Social responsibility required another form of political influence. One significant fact is that a number of noblemen renounced their titles during the course of the Parliament, including Hans Hjerta (later Järta), which gives an idea of the ongoing and future shifts of power in the Swedish political landscape.\textsuperscript{19}

One of parliament’s most important tasks – and the reason the young King found himself forced to summon the estates in 1800 – was that the Kingdom’s economy and finances had been in crisis since the war years of his father’s reign. Since the Riksbank had been guaranteed by three of the national estates since 1668, and these had also taken over responsibility for administration of the national debt in 1789, the King was compelled to obtain parliament’s consent as regards appropriation (taxes) and issues concerning national economy: these “Mina bekymmer” (My Concerns) that Gustav IV Adolf returned to in his opening speech to the estates.\textsuperscript{20} A description of the situation concordant with the King was, however, made in all the estates at the start of parliament, such as this one from Olof Larsson, Speaker of the Estate of the Peasantry:

The national economy and the monetary system have, contrary to expectation, become dislodged from their expected course [...] through a lengthy war that has disrupted our trade, harried our shipping, hindered the export of the Kingdom’s products, and upset the prices of necessary goods that must be procured from foreign localities; through two years of severe crop failures that have caused costly times in our country; and through last year’s entirely unsuccessful herring catch; which is why real money has disappeared or become insufficient and the credit notes guaranteed by the estates have lost their true value; that in such a situation a businessmen must always be unsure of their existence and the poorly paid, but heavily taxed, civil servants must continue in destitution and
poverty. Seeking such funds here as can save the Kingdom from hazardous consequences is infallibly the only thing that every honest and well-disposed member of parliament should use their powers of thought and exertions upon.  

Sweden was thus encumbered by a state debt in the hands of foreign creditors and a currency disorder with both bank notes and national debt notes in circulation. Immediate measures – a financial plan – were necessary to get Sweden’s economy on its feet; nearly everyone agreed on this. It was the interpretation and implementation of this delicate task that the ‘publicity battle’ wedged itself into – or, more properly, wrapped itself in. Lengthy deliberations, particularly in the Estate of the Nobility, indicate the importance and symbolic significance of publicity in political work, but it is difficult to see clear lines in these lively discussions. The record provides an indication of an easily-confused situation consisting of “a buzz of opinions”, to use historian Patrik Winton’s description of the debates on finances and state debt.

Circumstances that may seem obvious today – such as the fact that representatives of parliament should be given adequate information of the actual preconditions for their decisions – were not in place. Many perhaps agreed with Count Adolf Ludvig Hamilton who, in his attempt to analyse the connection between publicity and parliamentary work, argued that the “working method adopted can doubtless be improved. It confuses ideas, it shrouds in one and the same cloud of secrecy that which could be known with that which should be hidden”. Article 47 of the 1772 Instrument of Government is quoted time and again, and there was uncertainty over how strong the wording in it was that the King himself determined what should be kept within the walls of the Secret Committee and what could be discussed in full sessions. Should the state and administration of the Riksbank and the National Debt Office be published? If so, how, and to what extent? Is there a risk of speculation? How do the rights of the King stand in relation to the rights of the estates? What role does the Secret Committee really play? Were new instructions, designed by the estates, to the members of parliament’s Committee on Finance necessary, or was praxis enough? Should the Estate of the Peasantry participate in the governance of the bank?

In his memoranda from the 1800 session of Parliament, Hamilton offers a way to organise the field of opinion into four different groups – royalists, patriots, Jacobins (the young opposition) and agioteurs (speculators). Using this division, the discussion on the publicity of the bank and the national debt office may be sorted to some extent. Royalists from all the estates tended to regard the battle as an example of “the political miasma of the new period”, as one commentator in the mid-1800s formulated it;
The publicity battle in Parliament, 1800

that is, a dangerous flirtation with subversive tendencies on the Continent.

Patriots within the Nobility, as Hamilton considered himself, held the
Constitution and the rights of the estates highly. They defended the free-
dom of the press as laid down by law, but not necessarily further publicity
concerning the economy. They were critical of the autocracy, but also had
reason to be concerned by “the French frenzy”.

Even if the patriots wanted to in certain cases, they could not give the
Jacobins their full support. This group argued that the demand for public-
ity concerning the finances of the state did not only belong together with
human rights in the spirit of the Enlightenment, but in a purely concrete
manner dealt with the fact that the general public’s own economic inter-
ests had gained greater significance for state economic policy and for a
properly managed state debt. It was felt that the economy of the state could
no longer be, on the whole, a military concern but that national trade in-
terests, agriculture and manufacturing were also dependent upon reli-
able state finances. This applied especially to the welfare institutions and
schools of the time which, to a great extent, were organised using private
funds that had put purchases and redemption of Government bonds in the
system in order to be able to guarantee continued operations.

Finally, the agioteurs in Hamilton’s eyes were those in the Estate of the
Burghers whose politics were marked by ruthless greed and who had made
speculation in exchange rates their livelihood. Hamilton may be respon-
sible for this stamp himself, but as Patrik Winton has shown there was
widespread suspicion towards private entities on the capital market, who
were often accused of earning large amounts of money from the King-
dom’s misfortune.

It is not certain whether this was the case, but the atti-
dute still indicates social conflicts of interest and social dislocations that
Gustav IV Adolf could use in the Secret Committee to get his way. Despite
everything, he had the last word and, unsurprisingly, took a sceptical at-
titude towards the discussion on publicity; as he himself expressed it in a
letter to the estates: They should rely on his

[...] pure motives, which should not be misunderstood; the sincerity His
Majesty has displayed in all His undertakings, and the open-heartedness
with which His Majesty has, during this session, communicated to the Es-
tates of parliament information on the state of the Kingdom in all essen-
tials, should thoroughly convince the Estates of parliament of His Majes-
ty’s serious intention not to otherwise use His High Right, preserved in
the Fundamental Laws, for discerning what should be kept secret.
Publicity as political working method

By summoning parliament, Gustav IV Adolf risked meeting opposition. But consent from the estates for the financial plan that would entail serious measures such as currency reorganisation and new taxes would give the Government a legitimacy that could not otherwise be obtained. Consent, however, had to be widely based so even the King realised that ongoing insight into the deliberations of parliament was required in order to gain broader public trust. His communications strategy thus included granting the Registrar of the National Archives, Olof Sundel, the exclusive privilege of publishing news from the Parliament in Norrköping for 1800. In his open letter to the general public, the King emphasised that anyone who copied excerpts from the newspaper and published them would be fined 50 riksdaler and have their publications confiscated.31

The reporting in Riksdags-Tidningar is concise and brief (in total it covers 217 pages, compared with the 1,500 pages of printed records from the Estate of the Nobility). The King’s appearances and verbal statements dominate the space. At the same time, a relatively neutral profile is maintained towards the deliberations of the estates, which was perhaps judicious considering that these went to press for three of the estates: the Nobility, the Burghers, and the Peasantry. For the Burghers and Peasantry, the issue of publication of their discussions does not seem to have been a great matter, even if the reason put forth was that they were needed within the offices of the estates rather than that publication in itself would contribute to a more informed public.32 The Clergy did not print their deliberations in 1800, but the deliberations were conveyed indirectly to the general public through reading of excerpts from their records in the other estates which were then printed in the record of that estate or in Riksdags-Tidningar, so there was no resistance in principle to publicising the discussions in the estates.

In the Estate of the Nobility, however, the decision to publish the record was preceded by a shorter deliberation. Immediately after the opening of Parliament, it was demanded that the records of their parliamentary discussions be printed, which had not occurred in 1789. Baron Carl De Geer, in a kind of elegant self-defence, stated that:

[...] we live in an age in which many prejudices against our Estate prevail among the general Public. These prejudices should be corrected; the Public should be informed. Let us therefore display clearly, before the eyes of the public, how all our hearts are roused by zeal for the welfare of the Fatherland and the general happiness [...] To win this end, for a start, I believe it to be of service that our record be printed. Through that, the public will become knowledgeable of our business, deliberations, and decisions.33
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The proposal was approved; public understanding of the attitude and motives of the estate was a high priority. Concern for the dissemination of hasty expressions “that should not come before the eyes of the public”, however, caused Jonas Samuel Leyonstolpe to quickly propose that the record be edited before printing – an idea that did not gain a hearing, however. The Chairman of the Nobility stated that editing of this kind could only be accepted if it concerned “economic details that could not interest the public”. Nor do the approved records that went to print give an impression of being censored; rather, they consist of an almost dramatic production in which both sighs and shouts are depicted alongside long memorandums and excerpts of the record. Like this:

At this some concern arose.
Baron Hjerta, Hans. I protest = = = = A voice. Perhaps against the Secret Committee?
Baron Hjerta. I protest against all curtailment of the right of the Estates of the Kingdom to deliberate and decide on the National Debt Office in full session.
Several others also shouted that they protested, others that the matter had lapsed. Many voices were heard at once with Mr. Printzensköld calling for a vote: others shouted No!
The Count Lord Marshal announced that he was unable to allow voting in a subject of this nature.
Baron Hjerta, Hans, demanded that his protest be entered into the record.

When the Parliament neared its end after barely three months, the design and scope of the record were discussed in the Estate of the Nobility. Leyonstolpe wondered if it were really necessary to print everything, including comments and excerpts of records from committees and the other estates, upon which the Secretary of the Nobility, Axel Gabriel Silverstolpe, responded: “[...] as a principle for records, that everything read should be inserted, as long as an order has not been given to exclude something from it. He had received no such order.” Georg Adlersparre commented that the record must be printed “without diminution, so much more as sometimes the various particular statements ought to be of the importance and value that it would be a loss to the public to miss them”. Parliament could thus function as a forum for public debate and mobilisation of a more democratic opposition over the longer term, even if the decision had been made as to when the record could be disseminated in print. Baron Nils Silfverschiöld, for example, just before the discussion of the record above, turned to “a generation changed in temperament through enlightenment gained” with the proposal that the nobility voluntarily renounce certain privileged rights. It was noted in the record that a “remarkable commotion” arose among the members, and that they assured themselves that his dictation
would be printed even if the question could not be debated because privileges were something only the King could grant or withdraw.

The first issue of Riksdags-Tidningar was published in 1756 and printed news from Parliament. Photo: Melker Dahlstrand.

The estates’ discussions could, in principle, gain national circulation, but only after the event; since Riksdags-Tidningar was the only publication allowed to report from the deliberations, there was no space for immediate participation in the political process. The general public De Geer addressed in his proposal could therefore also have concerned communications among the estates. The parliament of the Estates was organised so that deliberations took place by estate, and they only came to each other’s attention through formal deputations in accordance with a predetermined ceremonial. Consequently, a considerable portion of the scope of the record consists of reports of the arrival and departure of the deputations, as well as the reading of excerpts from records.

The danger of unauthorised individuals from other estates or the broader general public, purely practically, accessing the assembly room was something that was discussed, and the requirement of showing special tokens at the entrance was emphasised. The various committees were of course a meeting place across estate boundaries – but not without complications, especially with regard to the oaths of silence required for certain committees.

The Estate of the Peasantry, for example, did not participate in governing the Riksbank and therefore was not represented in the Bank Commit-
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tee, where duty of confidentiality prevailed. This created a tricky situation for the Secret Committee when bank business was to be reviewed; it was not immediately known how that should be handled. In the handwritten record of the Secret Committee, it reads: “The Bank is only under the governance and guarantee of 3 estates. The Secret Committee, on the other hand, is composed of members from all 4 estates. This disparity in the composition of the committees appears to create obstacles for communication of this kind”. The matter could not be resolved quickly, but had to be studied. The Estate of the Peasantry had been denied participation in governance of the bank in previous sessions of parliament, but once again requested this to be changed early on during the Parliament of 1800. In a longer address, Olof Ekström argued in favour of their right to participate in the administration of state finances. It was an estate right, but he argued above all that the Estate of the Peasantry had reached a level of enlightenment and an economic level that guaranteed competent and suitable delegates. The other estates were not immediately convinced, but after careful study of the conditions around the history of the establishment of the bank in 1668 and deliberations within the estates, the Estate of the Peasantry was acknowledged as having acquired the necessary competence to be included in governance of the bank. Anything else would have been “to publicly affront the period of Enlightenment itself”, as Ekström phrased it before his fellow members of the estate. During the Parliament in question, however, the practical situation did not change.

Publicity – benefit or harm?

The publicity battle thus primarily revolved around economic issues. Quite contrary to what Brahe argued – that economic details could not interest the general public – it was soon clear that the financial details were of greatest interest to both members of parliament and to the broader general public.

In the Estate of the Nobility, only a few days after the opening of Parliament, Major Åke Jöran Holst demanded increased public insight into the administration of the Riksbank and the National Debt Office, closely followed by mining industrialist E. Fahlhem of the Estate of the Burghers and Baron Hans Hjerta of the Nobility. The question was also taken up in the Estate of the Clergy. What they wanted to see, according to the reports in Riksdags-Tidningar, was “an abolition of the secrecy, observed until now, in what concerns the state and administration of the Bank of the Estates of the Realm. This subject was talked about and discussed in the three estates that have guaranteed the Bank, in a fashion the record shows in more detail”.45
So which arguments were put forth for increased openness concerning the finances of the state? Holst came out first. In his memorandum, he argued that it was irresponsible not to revoke the “old upheld secrecy laid down in the law”. He protested against the duty of confidentiality the members of the Bank Committee had been demanding since the Parliament of 1778 and would again be demanding as it meant that the members of the estates who actually were the bank’s guarantors would not be given knowledge of actual circumstances but would have to be satisfied with “the members of the Bank Committee alone having the honour during all parliaments of assuring the estates that all was well”. Secrecy aroused the suspicion that the “confusion with which the monetary system of the Kingdom is overburdened” was due to failing state institutions – but perhaps this was unfounded? Open accounting, in any case, would contribute to making Swedish citizens willing to work for the common salvation of the state. For Holst, publicity concerning the bank’s operations and the National Debt Office thus hung together with citizenship and participation in the development of the kingdom.

His memorandum on cessation of the oath of secrecy and proposals for new instructions was tabled, which led to the Bank Committee being unable to begin its work even though the members of the Committee had been elected. In the Estate of the Burghers, Fahlhem argued that it was time for the state of “the monetary system of the Kingdom [to be] disclosed, scrutinised, and studied by all the estates of the Kingdom and also the entire Nation”. In the same spirit as Holst, he regarded “the cessation of the secret system as a substantial fundamental beginning for public aid”, but it required the understanding that “the entire Nation is watching, with attentive eyes” the deliberations of the session. In his speech, Fahlhem mentioned publicity outside the walls of Parliament, inspired by the examples and experiences of foreign nations, particularly England – which indicates that he was informed of the literature of the period on the subject. Perhaps he had read Pehr Olof von Asp’s book from 1799 on the general foundations of public finance, with comparative surveys of England and Holland.

Hjerta who, according to Hamilton’s categorisation, belonged to the young opposition, took up the thread with two detailed contributions a few days later. He wanted the Nobility to back Holst’s proposal, emphasising that the consequences for Sweden of having so obstinately followed “the method of covering everything the monetary system of the Kingdom concerns in darkness impenetrable to the Public” were so generally known that he had no need to dwell on them. “We have suffered from this long enough.”

By making rhetorical use of the word ‘public’ in all its forms, Hjerta provides an image of the fact that support concerning the necessity of another
principle regarding the state and administration of the Riksbank was just that – public. The obscure principle of secrecy is unsurprisingly set against the reason-supported principles and methods of openness. He brings in the civil right of the Swedish people to be given ‘general knowledge’ of how taxes and funds borrowed by the state are being used. The ‘public voice’ must be allowed to review these matters in order to decree ‘public confidence’ and thus contribute to the well-being of society. Hjerta cannot think of a single case where secrecy is to be preferred over openness: “I dare to believe that the public good has rarely required that the state of the Bank be a secret to the Nation”. The public good requiring secrecy and oaths of silence in 1800, when “questions concerning a general bankruptcy have begun occur” is instead highly detrimental, he argues. The people’s civil right to know is matched by the duty of state institutions to report on the grounds for the assessment of, and the results of, the administration of common funds.

He continued by emphasising that Swedish citizens have now been directed to manage their finances based on guesses about state debt and in constant uncertainty about the value of the mass of circulating bank notes and of the reliability of the credit system. By way of conclusion, Hjerta links the general public to a ‘we’. All Swedes are affected by poorly-managed finances: “I have dared mention the general public in the conviction that in this day and age, its rights and interests cannot be looked after with enough care.” With a direct appeal to the members of the Estate of the Nobility, but also to “the entire Swedish public” who would be able to read the printed record, Hjerta thinks “we should see, with our own eyes [...] our important duty” not to simply let tradition prevail, but that “at the present point in time, we” should dare to defend the right to insight. Hjerta anticipates the objections he believed will come, such as that the reliability of the bank would be weakened if its state was exposed to all who wish to see. He argues that events during the 1700s have showed that the general public’s ignorance of the bank’s ability has only had unfortunate consequences, since the bank is not only the concern of the estates, but a matter for “the entire Swedish public”.

Hjerta’s arguments were convincing. How would the members of parliament be able to guarantee their own Riksbank and relief of state debt without knowing the circumstances? How would it be possible to create general political confidence through keeping the national economy secret? The question of insight through public access, however, was considered entirely too delicate for a quick decision. Voices more loyal to the government urged caution, arguing that the solidity of the bank was dependent upon secrecy. Up until now, there had always been secrecy as a guarantee of
solidity and strength; what could have changed these circumstances now? Eric Ruuth referred to Swedish practice, and that “our forefathers were at all times aware the foundation and an imperative necessity of maintaining secrecy in everything that was required to keep quiet: let us follow their example, as it is based on strong grounds!”

As regards the administration of the state debt by the National Debt Office, it was repeated that the office was subordinate to the Secret Committee and thus also to the King’s decision on what would be kept secret and what could be made public. Hamilton attempted to defend the secrecy of the bank with the argument that no bank in Europe publicises its position. It might perhaps work in the free states of America, but in that case it was due to the fact that it was “surrounded by wild nations unfamiliar with every type of calculation. [...] The concern of the Republic is entrusted only to its own countrymen; an enemy could never profit by it”. Hamilton – and many with him – argued that the bank would be jeopardised by speculators and “profit-hungry extortioners” if, for example, the size of the silver supply was declared. How would publicity then be able to strengthen confidence in the bank and in Sweden?

The discussion concluded with the estate deciding to refer the issue to the Bank Committee. The other two estates that took part in the governing of the bank did the same. It was hoped that the members of Bank Committee, who had insight into the state and administration of the Riksbank, would be able to determine whether publicity was detrimental or if it could be beneficial. The members of the Bank Committee discarded the oath of secrecy and their work could begin. Further, the question of publicity for the National Debt Office was sent to the Secret Committee for their opinion, even though most of them were convinced that Article 47 of the Instrument of Government could only be interpreted one way. George Adlerström accordingly chose to leave his seat on the Secret Committee with the simple justification that since 1789, the estates had been charged with administering the national debt and that it should therefore be debated in full session without detriment to the Kingdom: “[...] I hereby add my individual conviction that the guarantee of a debt whose creation and amount are not known involves an incongruity, and that publicity of administration of the National Debt, both past and future, is an unavoidable condition for the general assistance, presumably based on taxation, that is being referred to in the current session.”

The response of the Bank Committee must have disappointed Hjerta and his sympathisers, but was not a surprise. Like Ruuth and Hamilton, it was argued that confidence in the bank was not built on publication, but on a “careful, uninterrupted fulfilment of obligations entered upon”. For
132 years, the maxim of the bank had been that “its debts, claims, and capital should only be known by certain persons appointed to it and entrusted by it; that everything that occurs among these same persons regarding these activities and either for security or benefit of the same should be kept quiet, and held hidden and secret”. And so it would be in future as well, for both private and state banking transactions. Anything else would open the door to “unrestrained greed and mean self-interest, always enemies of stability and security in the finances of the Kingdom, [which] would under unrestricted publicity of the state of the Bank in all its parts be able to calculate the potential ability of these works on its numbers [...] so it is feared, with reason, that most of the healthy institutions would be counteracted in this way, not without success”.

Remarkably enough, this conclusion went against that of the Secret Committee as regards the national debt. Gustav IV Adolf had certainly responded immediately to the memorandum on publicity that had been raised in the Estates of the Nobility and the Burghers, saying that the estates would be given the information the King found to be in the best interests of the people and their real well-being. His letter was read in full session, in which the wording of Article 47 of the Instrument of Government was repeated. At the end of May, after the Secret Committee had presented its proposal for a financial plan and currency reorganisation, however, the King conceded that information on the size and administration of the national debt would in future be made known annually: “[...] if instructions for those entrusted with administration can determine what of their administration and state can and may be made public at some appointed time during the year, without publicity being allowed to extend to that which obviously could bring the Kingdom or its monetary system into peril”. This may seem to be a disappointing victory for the defenders of publicity. Without being summoned on a regular basis, parliament could not constitute a genuine force. In reality, the estates of parliament were not given full insight into state finances until 1809. At the same time, the Secret Committee conceded in its report on the operations of the National Debt Office since 1792 that there was no reason to keep the national debt secret. It was argued that

[…] the opinion in that part of the nation that does not take particular pains to research will always be led by false assessments as long as the information could not be gained without going through much red tape. On the other hand, publicity is the only and the most powerful means of removing all incorrect ideas, thereby strengthening and retaining confidence in a monetary system.
The turns of phrase incontestably lead thoughts to Immanuel Kant’s article “Answering the Question: What is Enlightenment?” which was published in a Swedish translation in 1797 in Läsning i blandade ämnen (Reading in Diverse Subjects), thereby pointing beyond a parliamentary context. Kant writes: “That is why there are only a few men who walk firmly, and who have emerged from nonage by cultivating their own minds. It is more nearly possible, however, for the public to enlighten itself; indeed, if it is only given freedom, enlightenment is almost inevitable.”

The Principle of Public Access to Official Documents – a hotly-debated topic

It is plain that the issue of public insight was a hotly-debated topic in the Parliament of 1800, even if the motions on increased public access did not result in immediate changes of attitudes and political programmes. There were parliamentary records in print for everyone to study, however, which may have contributed to increased discussion among Swedes with an interest in politics. As I mentioned above, people could also read Läsning i blandade ämnen (1797–1801), which published articles that commented on current national economic and philosophical ideas, and broadened the discussion in parliament outside the narrow field of the politics of the day.

The editor of the periodical, Georg Adlersparre, belonged to the young opposition who wanted to see new citizen’s ideals, a new kind of nobility and a productive peasant class in an enlightened constitutional monarchy. He was not a revolutionary, but saw social transformation over the longer term. The enlightenment of the people was necessary in this vision of a free society, and one way of promoting this enlightenment was work in the service of the Principle of Public Access to Official Documents that Adlersparre carried out in his periodical – but as an article from the parliamentary year of 1800 stated: “But this means is a slow one! Without a doubt: it does not flatter the human impatience that wishes to survive the completion of the building it is laying the foundations for.”

Kerstin Anér, in her major study of Läsning i blandade ämnen, has pointed out that Adlersparre found it difficult to blame the country’s misfortunes on war, crop failures or a bad herring catch, rather than on general ignorance of economic facts. His periodical would contribute to popular enlightenment in this regard, and thus Läsning i blandade ämnen would contribute to the deliberations in the estates of parliament. As editor, Adlersparre seems to have been particular about both references to sources and support for the texts in historical archives, and about the fact
that the information these could provide on Sweden’s political context was available to those who wished to have it. Consequently the Principle of Public Access was used for purposes of general education, for example in the long article on taxes under Karl XII – which must have put the discussion on taxes and a financial plan in 1800 into perspective.67

There is a clear pedagogical concept behind Aldersparre’s editorship that consistently connects with public insight and freedom of the press. In an editorial comment, he writes of his conviction “that it is the purpose of freedom of the press, and of real benefit, that subjects of importance be investigated and disputed before the public through general printing”.68

This meant that Adlersparre kept his periodical open to political articles with different perspectives. If he did not agree, he provided editorial comments in the notes, but he let the authors have their say. This occurred, for example, in connection with the article “Allvarsam men välgrundad Kritik” (Serious but Well-Founded Criticism), which intervened in the current economic discussions and took a position for administration of the National Debt Office in a way that the author of the article himself did not believe the readers of Läsning i blandade ämnen would sympathise with.

The article is a criticism of a text published earlier in the periodical, “Något om börs, cours, agio, riksgäldscontorshandel, m.m.” (On the Stock Exchange, rates, agio, National Debt Office business, etc.) in which the blame for the disarray on the Swedish finance market is not placed on private entities but on a poorly-functioning system as a whole.68 The critic concludes his article by saying that publication in Läsning i blandade ämnen “is a compliment to the editors of the periodical work concerned, pushed through at the wrong time [...]. If these gentlemen really deserved such a compliment, “On the Stock Exchange, etc.” would never have been found among the collection of manuscripts they publish”. But surely an assertion of this kind only shows that Adlersparre and the defenders of publicity had history on their side?

Perhaps it did not seem so in 1800, but ten years later both Adlersparre and Järta would play an important role in the transition from autocracy to constitutional monarchy. The institutional memory of a dynamically-public space was then reactivated once again, in which the communicative initiative did not start from and was not controlled by the central powers but by Sweden’s citizens with the support of the Principle of Public Access and the freedom of the press laid down by law.
Notes


5 Mansén, Elisabeth, *Sveriges historia, 1720–1830*, Norstedts, Stockholm 2011, provides a more biographical interpretation of Gustav IV Adolf’s suspicions, and places more importance on the fact that he lived with the memory of the murder of his father; pp. 357–368. See also Adlerbeth, Gadmund Jöran, *Historiska anteckningar, tredje delen, Gustav IV Adolfs regering, 1796–1807*, N. M. Lindh, Örebro 1857, p. 68, on the king’s tears during the Parliament of 1800 at the thought of his father’s death.


9 On these new scenes and the type of public access that developed in the form of periodicals and societies of different kinds, see Öhrberg, Ann, *Samtalets retorik. Belevade kulturer och offentlig kommunikation i svenskt 1700-tal*, Symposion, Stockholm 2014. For a solid review of words and terms in early modern political discourse, see Lindberg, Bo, *Den antika skevheten. Politiska ord och begrepp i det tidigmoderna Sverige*, Filologiskt arkiv 45, KVHAA, Stockholm 2006.

10 According to *Svenska Akademiens ordbok*, the first instance of the term offentlighetsprincipen (principle of public access to documents) is from 1931 in *Nordisk familjebok 3* uppl. 15:167. It is worth noting that what Jürgen Habermas, in *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Arkiv, Lund 1984 [1962], designates as the ‘principle of public access’, or alternately the ‘principle of publicity’, does not refer to public insight but a method of enlightenment and a principle for a legal system in which ”bourgeois private persons formed themselves into a public, and the sphere for their reason – that is, publicity – had obtained the political function of negotiating between State and Society”. p. 137.


13 Hirschfeld 2009, p. 381.


On the lowering of civil servants’ real wages, see Maria Cavallin, *I kungens och folkets tjänst. Synen på den svenske ämbetsmannen 1750–1780*, Gothenburg 2003, p. 55 ff. The wage budget of the central administration remained unchanged from Charles XI’s establishment of the administrative structure in 1697 through 1778, and well into the 1800s for county administration budgets. Even if the wages for civil servants in the central administration were raised in connection with the 1778 currency reorganisation by Gustav II (which did not take place for county administration budgets), the wage budgets were not adjusted for changes to the value of money; at the same time, the growing state administration required that more civil servants have a share. Civil servants were expected to maintain a life consistent with their station that was most often not possible on their meagre incomes.

Brahe, Magnus Fredric, RAP 1800:1, p. 4, 14 March.


RAP 1800:2, pp. 701 ff, 29 May. See Järta, Hans, *Hans Hjertas underdåniga förklaring angående den af honom, inför Höglofl. Ridderskapet och Adeln, den 29. Maji 1800, gjorda afsägelsen af sit Adelskap*, Anders Zetterberg, Stockholm 1800. In the article “Svenska Adelens Bestämmelse” [Regulations of the Swedish Nobility] (*Läsning i blandade ämnen*, 1801, No. 44, pp. 29–127), Adlersparre defends the role of the Nobility in a constitutional monarchy as the negotiated balance between the people and the King, and he predicts that if the monarchy disappears, so will the Nobility: ”After the fall of the monarchy, there is nothing that could continue the existence of the nobility, and in a period of a few centuries it would cease by itself; on the other hand, as the other members of the state do not constitute any hereditary class but are entirely mixed with each other and can just as easily continue to be what they were: individual members of the state.” (p. 37) On the altered self-image of the nobility, see Göran Norrby, *Adel i förvan-dling. Adliga strategier och identiteter i 1800-talets borgerliga samhälle*, Uppsala 2005.

For this speech, see e.g. *Riksdags-Tidningar* 1800, Nos. 10 and 11.


Elinder, Erik, *Adolf Ludvig Hamiltons minnesanteckningar från 1800 års riksdag*, offprint by Personhistorisk tidskrift 1954, p. 32: the debate was “entirely naturally somewhat confused, as it ’had to be conducted with hidden motives and arguments’”. Winton 2009, p. 82.


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"Riksdagen i Norrköping år 1800" 1854, p. 403.
Cecilia Rosengren

28 Elinder 1954, pp. 26 ff.
31 The letter is dated 10 March, Norrköping Castle; published in the compilation of the sessions’ Riksdags-Tidningar in Tidningar för Riksdagen i Norrköping År 1800, printed by Director Johan A. Carlbohm in 1800. Anyone copying from these parliamentary periodicals for their own publication risked 50 riksdaler in fines and confiscation of the newspapers.
32 BgP 1800, p. 33, 14 March: "Upon the expressed desire to this effect by several of the Members of the Estate, it was decided that the Minutes being kept in the Estate during this Parliament, in a way that had been customary during previous parliaments for the benefit of the Chancellery of the Estate, should be sent to print in full as far as is practicable."
33 De Geer, Carl, RAP 1800:1, p. 7, 14 March.
35 Brahe, Magnus Fredric, RAP 1800:1, p. 4, 14 March.
36 See e.g. the argument in connection with the decision to refer the issue of possible publicity concerning the state and administration of the bank. RAP 1800:1, p. 82, 24 March. Or the dramatic mood that is accurately reproduced in the record when Hans Hjerta, and several with him, renounced their nobility after several hours of discussion concerning the proposal of the Secret Committee for a financial plan, and the failure to push through the demand for time-limited appropriation (i.e. regularly recurring parliaments). RAP 1800:2, pp. 701–705, 29 May.
37 Riddarhussekreteraren RAP 1800:1, p. 525, 23 May.
38 Adlersparre, Georg RAP 1800:1, p. 525, 23 May.
39 Silfverschiöld Nils, RAP 1800:1, p. 505, 22 May.
40 Only in 1834 did the general public obtain access to the deliberations of the estates and special public galleries for the purpose. Rosengren, Cecilia, Tidevarvets bättre genius. Föreställningar om offentlighet och publicitet i Karl Johanstadens Sverige, Stockholm/Stehag 1999, pp. 131–156.
42 Mickels, Hans, BnP:1, p. 57 f., 12 April.
43 BnP 1880:1, p. 58 f., 12 April: "...[T]he Estate unanimously agreed with... the request to be allowed to participate in the governance of the Bank together with the other respective estates." BnP 1800:1, p. 63 ff., 23 April. RAP 1800:1, p. 135 ff., 23 April; p. 195 ff., 30 April.
44 Ekström, Olof, BnP 1800:1, p. 66, 23 April.
45 Riksdags-Tidningar, 1800, No. 20, p. 81.
46 Holst, Åke Jörn, RAP 1800:1, p. 32 f., 19 March.
47 In the instructions to the Bank Committee in the Parliament of 1778, which also applied to the Parliament of 1800, there was a slide between what was regarded as secret and what could be discussed in full session. See e.g. BgP 1800, p. 93 ff., 26 March. Article 2 states that “economic matters, which are not of a character that should be kept secret in the best interests of the activity and for service, the Bank Committee shall present to full sessions of the Estates of the Kingdom”. Article 1 makes it clear that for the Bank, “the decision of the Estates of the Kingdom
should be regarded as, and apply as an irrevocable law”. At the same time, it says that the King, in his grace, will do what he sees fit with the committees placed under oath, which the speaker of the Estate of the Burghers will announce to his fellow members of the estate; BgP 1800, p. 87, 24 March. See also BgP 1800, p. 102 f., 1 April, the King’s response regarding the desire of the Nobility and the Burghers for expanded knowledge of the administration of the National Debt Office. According to Article 47 of the Instrument of Government, the king has the right to distinguish what should be kept secret, coupled with “the best interests of the public and a caution necessary in delicate matters”. The oath form BgP 1800, p. 96 f., 26 March: “I promise... to keep hidden and secret that which should be silent, and to reveal to no one anything that could cause the Bank or the Kingdom harm or discredit.”

48 Fahlhem, E., BgP, 1800, pp. 69 f., 20 March.
49 Winton 2009, pp. 93 ff.
50 Hjerta, Hans, ”Ödmjuk Memorial”, RAP 1800:1, pp. 48–52, 20 March. See also Hjerta’s long contribution later that same day: RAP 1800:1, pp. 71–75.
52 Ruuth, Eric, RAP 1800:1, p. 66, 24 March.
54 Lewenhaupt, Clas, RAP 1800:1. p. 67, 24 March.
56 RAP 1800:1, pp. 221 ff., 9 May.
57 RAP 1800:1, p. 224, 9 May.
58 RAP 1800:1, p. 97, 1 April.
59 RAP 1800:2, p. 502, 22 May.
60 Winton 2009, p. 122.
61 BgP 1800, pp. 242 ff., 23 May.
62 BgP 1800, pp. 242 f., 23 May.
63 Immanuel Kant, “Svar på frågan: Vad är upplysning?” (Answering the Question: What is Enlightenment?), Läsning i blandade ämnen 1797, Nos. 7 & 8, p. 17.
64 On Georg Adlersparre’s political ideas, see Anér 1948, pp. 344 ff.
65 ”Försök om Patriotismen” (An Attempt about Patriotism), Läsning i blandade ämnen, 1800, Nos. 42 & 43, p. 52.
67 ”Anteckningar om Extra-Ordinära Contributioner samt Uppskattning och Förmögenhetsaftgift, under Konung Carl XII:s Regering” (Notes on Extraordinary Contributions, as well as Assessment and Property Fee during the Reign of Charles XII), Läsning i blandade ämnen, 1800, Nos, 39, 40 & 41, plus supplement in 1801, Nos. 42 & 43.
68 ”Allvarsam men välgrundad Kritik” (A Serious but Well-Founded Criticism), Läsning i blandade ämnen, 1800, Nos. 33, 34 & 35, p. 166. See also the programmatic article in the first issue: ”Om den svenska tryckfriheten. Försök att bestämma dess nu varande lagliga gränser” (On Swedish Freedom of the Press: An Attempt at Determining its Present Legal Limits), Läsning i blandade ämnen 1797, No. 1, pp. 1–30.
69 ”Något om börs, cours, agio, riksgäldscontorshandel, m.m.” (On the Stock Exchange, rates, agio, National Debt Office business, etc.), Läsning i blandade ämnen, 1799, No. 32; The refutation, together with the editor’s long notes: “Allvarsam men välgrundad Kritik” (A Serious but Well-Founded Criticism), Läsning i blandade ämnen, 1800, Nos. 33, 34 & 35, p. 166.
The Freedom of the Press Act of 1766 in its historical and legal context

An attempt at a summary

ROLF NYGREN

The art of printing and censorship – companions throughout history

In 1483, just over thirty years after Gutenberg had opened his printing works in Mainz, the first publications printed within the borders of Sweden-Finland came out. They included a book of moral instruction illustrated with wood engravings, written in Latin and produced by a printer who had immigrated from Lübeck. The first book to be printed in Swedish was published in Uppsala in 1495, and was also a pious tract on the art of dying.¹ Opportunities for producing more advanced publications in Sweden were limited, as was the market.

It was the battles of the Reformation that provided the big breakthrough for printing. Now it was a matter of mass production. The New Testament was printed in Danish in 1524, in Swedish in 1526 and in Finnish in 1548. Complete editions of the Bible in Swedish and Danish were published in 1541 and 1550 respectively, while the Finnish only came out in 1642. The printed Bible editions in the vernacular had consequences far beyond religion. They became normative for the Nordic national languages.

However, the printing press was a double-edged sword. It could mass produce the word of God and the commands of the powerful, but also messages that were critical of the regime and religious authorities. Censorship became the notorious companion of the printing press.²

What was happening around Europe also happened here. In 1526 King Gustav Vasa seized Bishop Hans Brask’s printing works in Söderköping which had been set up three years earlier to fight the Reformation. King Gustav’s confiscation of Brask’s printing press is the first known case of
radical censorship in Sweden, but it was only the beginning. In 1525 King Gustav himself established a printing works in Uppsala, which was soon moved to Stockholm. It was from these presses that the Swedish edition of the New Testament emerged. 

Catholics and Protestants used the power of the printing press to fight each other. In the 1580s there were Catholic printers at Vadstena Abbey and at the Abbey on Riddarholmen in Stockholm, but when John III’s Catholic-friendly regime was replaced by his brother Charles’s harsh Protestantism, both were closed down.3

During the reign of Charles IX, all chances of printing or spreading ideas that clashed with the Duke’s anti-Catholic church policy definitively disappeared. The King’s control of the printed word was total. Attempts to start a debate in Sweden about forms of government ended badly for those of the wrong opinion.4

Worse was to come in the years that followed. Religious control tightened, step by step, during the 17th century, the reason being Charles IX’ and Gustavus II Adolphus’s struggle against Catholic Poland, where a descendant of the House of Vasa – as pure of lineage as any of the Swedish Vasa descendants – was King. The Charter of Örebro of 1617 was directed against Catholicism in general and Poland in particular. This Charter linked confession with politics. Swedes were banned from studying at foreign academies of a Catholic character, from converting to the Catholic faith or importing Catholic literature. People exposed as Catholics were executed. In 1655 a new religious charter was introduced that increased repression even more.5

Why this obsession with fighting false doctrine? It was born of the absence of a clear distinction between religion and politics such as we have today. Religion legitimised the state, and the sovereign’s religion became the religion of his subjects. The type of faith was perceived as the coun-
try’s most important *fundamental law*, which in Sweden’s case meant that Lutheranism became the Kingdom’s constitutional bedrock. This was expressed in Article 1 of the 1634 Instrument of Government by the words:

As unity in religion and correct worship are the strongest foundations of a commendable, concordant and lasting rule, the King as well as all officials and subjects of the realm shall hereinafter first and foremost abide by God’s pure and clear word, such as it is written in the prophetic and apostolic writs, stated in Christian general symbols, the Lutheran Catechism, the unchanged Augsburg Confession, and decreed at the Uppsala Synods and in the decisions and assurances of the former estates of the realm.

Thus the Instrument of Government laid down the documents that defined the Swedish confession of faith. The inclusion of Dr Luther’s Small Catechism – the most widely-spread publication in the land – in the succession of confessional documents brought a consequence that may appear odd, to say the least, to us today. A textbook on the basics of Christianity was given the rank of fundamental law!

But when, in the following step, it came to interpreting these writings, the same difficulties surfaced that adjudicators have always grappled with: going from principles and paragraphs to practical application of the law. In 17th-century language, this was described as the fight against false doctrine that led astray. It was up to the higher Clergy and the Professors of Theology to determine the meaning of false doctrine.

The first-known attempt at organising censorship was made in 1630, when Erik Schroderus, Royal Secretary and also Stockholm’s most productive printer, was instructed by the King to report everything that was printed in Stockholm. What this task actually involved is not clear. In Uppsala from 1655, no dissertation could be posted without a signature from the dean concerned. Remarkably, no properly organised censorship took shape until 1661, when the censorship task was included in the instruction for the Chancellery College (*kanslikollegium*). Every attempt to think outside of the opinion box was struck down, and repression reached even up to high-ranking priests and bishops. Thus theological strife brought constitutional consequences that may seem peculiar from our present perspective.

**Johannes Matthiae.**
The Government’s reason for instituting organised censorship was that suspicion of doctrinal deviation against Bishop Johannes Matthiae of Strängnäs and Bishop Johannes Terserus of Turku. They were accused of ‘syncretism’, which meant that they were advocating what modern usage calls ecumenicalism – primarily between Protestant churches. This, in the view of orthodox theologians as well as government representatives, was a threat to vital state interests. In the final analysis, it was all about the realm’s cohesion around one single, clearly-formulated creed – in other words, the foundation on which the realm rested. The writings of the two bishops were subjected to scrupulous examination and were condemned as false doctrine.10

Censorship was now organised with the ambition of blocking every crack through which opinions that expressed false doctrine could get in. The first step was to forbid the printing and distribution of the two bishops’ writings. However, in order to prevent even the possibility that such writings reached the public in the future it was decreed that all writings, by any writer at all, which in any way dealt with general peace and unity in spiritual and worldly matters, must be turned over to the Royal Chancellery for scrutiny before they went to press, ‘that they may then be sent for printing if We find this to be in order’. In other words, no printing of anything on any subject without royal printing permission – which was subsequently indicated on the title page of the examined texts with the Latin word *imprimatur*, ‘may be printed’.

But censorship would not stop there. Before they could be disseminated, and quite irrespective of their title and subject matter whether spiritual or temporal, all pamphlets, books and treatises had to be submitted in two copies, without exception, to the Royal Chancellery. One copy would be preserved for the future in the National Archives, the other would go to the Royal Library, ‘that We may thus know not only what will be published by the printers, but also more conveniently be able to determine whether there be anything detrimental contained therein’. Should a printer dare to print anything without prior permission, an ‘exemplary punishment’ was to be imposed on him.11

There are four important points to draw attention to in the censorship programme of 1662. First, censorship covered both spiritual and temporal subjects, the reason being that no separation could be made between the two. Second, prior scrutiny of everything that went to press was introduced. Third, both authors and printers were made liable for ensuring that publications did not contain anything that was ‘detrimental’ to the Government. And fourth, two deposit copies had to be delivered, one to the Royal Chancellery and the other to the Royal Library.12
By means of two religious charters of 1663 and 1667, and of the 1686 Church Act, forms for controlling literature were fine-tuned. In 1684, censorship regulations were amalgamated into a separate statute which increased supervision of academic teaching, particularly in subjects that touched upon the form of government. In keeping with this, in 1687 there followed a ban on reproducing Riksdag documents and royal ordinances etc by means of private printers. Here, then, was the origin of the prohibition on printing Riksdag documents which applied during the Age of Liberty.

Even though it was the job of the cathedral chapters to monitor that no false religious doctrine was disseminated, Charles XI instituted – in 1687, on the recommendation of the clergy – a special office of the censor, censor librorum, linked to the Chancellery College and tasked with fighting religious ideas that lay outside orthodoxy. Thus censorship was primarily theological but, due to the prevalent view of the relationship between theology on the one hand and law and politics on the other, the theological signals exerted effects far beyond the core areas of theology. Most of what was written in this society saturated with religion had to pass through the eye of the needle of censorship.

Thus, beginning in the 1680s there were two entities charged with literature surveillance: the cathedral chapters and the Censor. The Censor had to keep a record of the books he had examined, and report this to the Chancellery College. The index librorum prohibitorum, list of prohibited books, was the record of the books that could not be published. One such index from 1708 has been preserved and lists 78 book titles, most of which were spiritual literature. Censorship was supported by cautionary royal decrees. In 1706 these concerned both pietism and harmful books, and in 1714 ‘subjectivism’ i.e. pietism once again.

Despite all attempts by means of draconian punishments at preventing false doctrines from gaining a foothold in the country, breaches were struck in the wall of censorship almost immediately. Sweden’s entry into the wars on the Continent removed the ability to isolate the country’s population. The moment Swedish troops landed in Germany, the doors were flung open to precisely the kind of impulses that the religious charters had done everything to stop.

Ironically, it was the state itself that set censorship’s first pitfall: the state’s own ‘import’ of prohibited literature, which was the fruit of plunder. One of the first major lootings was of the Jesuits’ library at Braniewo (Braunsberg) in 1626, whose collections provided extensive learning, in particular in philosophy and medicine. Most of the Braniewo library seems to have ended up in Uppsala. But the sacking of Braniewo was
INDEX LIBRORUM


FUNUS MENTUM malorum, & bonorum operum. Ind. Trid.


G


GAJAL Rod. 1. Cl. Ind. Trid.


GALATEUS Hieronymus. 1. Cl. Ind. Trid.

GALECIIus Nicolaus. 1. Cl. Ind. Trid.


GALLASNIUS Nicolaus, Calvini Defensor. 1. Cl. Ind. Trid.

de GALLEMACT Joannes. Declarationes Cardinalem Concordiam Con-
clii Tridentini interpretationem, cum citationibus Joannis So-
cellii, & Remondini Augustini Barbod; Dscr. 5. Sept. 1634.

— Sacri Concilii Tridentini Decretales, & Declarations 3. 3o. Apr. 1683.

Cardinalium ejusdem Concilii interpretationem, praeferitum se 3. 6. 1631.


Dscr. 15. Aug. 1683.


GALLUS Nicolaus. 1. Cl. Ind. Trid.


de GAND Antoine Eveque. Vide Triplex.

GANDAVENTUS Ludusse, seu Comedia Gandavi exhibebis super quae. Que eft major confirmatio morientis. Ind. Trid.


only the beginning. The poverty of Sweden’s libraries would be remedied by means of the systematic pillaging of libraries and archives that lay in the path of the Swedish armies. Looting was indiscriminate: the spoils of war included permitted and prohibited publications without distinction. In 1642 Swedish commanders received orders from Chancellor Axel Oxenstierna to plunder German and Polish libraries when the opportunity arose, and then take the booty to port cities on the Baltic coast for forwarding by ship to Sweden.20

And thus it was that theology, jurisprudence and philosophy which should, following careful weighing on the delicate scales of orthodox theology, have been in the Uppsala academy’s poison cabinet could in fact be perused by academics who wished to raise their gazes higher than orthodoxy permitted. In Uppsala there were astronomical publications with Copernicus’s own annotations. In Strängnäs Cathedral Library, Bishop Johannes Matthiae sat for many years surrounded by a strange collection of looted literature before the theological censors struck against what he had written as a result of his assiduous reading there. That collection of books would have been more than sufficient for a full Catholic seminary.21

But more rends were torn in the net of censorship and control as cross-border trade and migration grew. As an example of this, take the immigration of Walloon workers and smiths to the iron works in central Sweden. The Walloons were not Lutherans – they were mostly Calvinists and, exceptionally, Catholics. These immigrants practised forms of Christianity that did not conform with Lutheran orthodoxy. They brought their own books with them, and the clergy warned of the spread of false doctrines to the peasantry – but the Government understood that in the choice between maintaining the clergy’s peace of mind by means of firm censorship, and guaranteeing efficient iron production, the latter had to be given precedence.

High-ranking officers who had accumulated wealth during the continental wars could spend their new riches on building castles, art collections and libraries; acquisitions for the latter were made not only in the form of war booty but also through planned purchases from booksellers in central Europe. A good example of this was Carl Gustav Wrangel whose book purchases have been charted in detail.22 One thing at least can be said about these nouveaux-riche upstarts: they acquired these beautiful volumes without caring whether false doctrines might be lurking in their pages.

But the real battle over the unfettered search for knowledge was not among the farmers and the generals, but within academia and jurisprudence. This now concerned a major shift of the boundaries of culture.
Neither the King nor the Clergy could control the thoughts of others

With the re-establishment of Uppsala University in 1595, the preconditions were created for higher education in Sweden which had been missing since the university had been closed down in the 1520s. The primary task of the university during the first decade after 1595 was to train ministers in the orthodox Lutheran spirit, but only a few years into the following century it offered jurisprudential teaching alongside the theological. Johannes Messenius was appointed *juris et politices professor* to the first law chair, with the primary task of teaching constitutional law. In 1622 the Skytte Professorship in Eloquence and Political Science was established to train diplomats in the service of the new great power that Sweden was becoming. And in 1626 a chair in *philosophia civilis* was instituted, with teaching duties in ethics and politics, but the professor holding the history chair, established at around the same time, could also lecture on constitutional matters. All these chairs were created for a specific reason. The great power in the making needed to train its own officials to represent it throughout Europe, and the skill set for that involved more than Lutheran scholasticism.

Uppsala University eventually grew out of its primary role as a seminary. Beginning in the 1620s, the preconditions were in place for creating an academic environment of the kind that was a given in continental academic life. The growth of the university was no longer solely dependent on the needs of clergy training, even if the Faculty of Theology continued to dominate due to sheer size and number of students. The study of law, politics and history brought about an opening towards the international learned community in two ways. *First*, non-theological professorships were filled by academics of good repute who were either immigrants to Sweden or Swedes educated at foreign universities. *Second*, an increasingly thriving trade, its position as a great power and the newly-instituted high courts all demanded an adaptation to Europe and an openness to foreign trade procedure, diplomacy, sources of law, practice and legal doctrine.

On the judges’ tables in the high courts were not only the Laws of the land and the Bible, but also the Institute and the Digest, the most important works of Roman Law. And in addition to these sources of law came jurisprudence, ‘the doctrine’ marked by Roman law and written in Latin by lawyers who were often Catholics.

High Court practice, not least in the field of civil law, was developed by means of a truly innovative legal technique. In the many cases where the law did not provide any guidance for the correct adjudication of the matter, the high courts turned to international legal doctrine in search of
solutions, and so the courts refined the Swedish legal system. While it was still true that rulings were based pro forma on the Provincial and Town Codes, practice was nevertheless shaped by Romano-Germanic law and jurisprudence that provided the very prerequisite for the Code of 1734, still formally in force in Sweden-Finland. It goes without saying that no censor could object to the legal sources and literature of learned jurisprudence. Both were quite simply far too forceful and independent parts of social and economic life to be controlled by the censors of the Chancellery College.23

But jurisprudence was not alone in accepting influences from international impulses. The real battle for freedom of thought would be fought between the Faculties of Theology and Medicine at Uppsala. During the 1660s the latter had become a stronghold of what was known using a contemporary term as ‘the new philosophy’, whose foremost representative was René Descartes, Cartesius – the man who had persuaded Queen Christina to do the worst thing a Swede could do: convert to Catholicism. The new philosophy was brought to Uppsala by Professors Per Hoffvenius and Olof Rudbeck the Elder. In 1665, Hoffvenius published a dissertation that included Cartesian ideas on the advantages of the experimental method, which was contrary to the predominant scholasticism. This turned out to be a real bombshell. The theologians feared that confession of faith unity would be damaged, and saw the new philosophy as atheism which had to be opposed with powerful means. Hoffvenius was warned by the Faculty of Theology. This was the start of one of the fiercest and most protracted academic battles ever in Sweden. At issue was, simply put, whether the Faculty of Theology should be allowed to censor the Faculty of Medicine.24

At first the orthodox side showed sufficient strength that it got the Government, as mentioned earlier, to issue yet another religious decree, toughening the tone of the previous ones of 1617 and 1663. Every foreigner who arrived in the realm was placed under the surveillance of the Church. The importation of literature that could in any sense be perceived as irreconcilable with orthodoxy was prohibited.25

But this did not stop the Cartesian philosophy. The battle resumed with renewed vigour. In 1686 the Estate of the Clergy complained that Cartesianism was flourishing far too freely at the university: if nothing was
done, unity of religion might be lost. Despite the King’s interest in protecting the state creed, he turned out to be more accommodating than the orthodox side had hoped, and chose a compromise: the Lutheran doctrine was not to be questioned, but ‘philosophy shall retain the freedom to employ good reason and experiments to seek out the truth’.

Thus the extraordinary thing happened that the experimental method was let loose, while literature based on experiments could very well be listed in the index and therefore be saddled with import, printing and distribution bans. This duality reveals pretty clearly how long the rends in the net of censorship were. A few years into the 1690s, the experimental method was acceptable in a manner that had not been so ten years earlier. On a deeper level, this implied a new insight and a new attitude: the form of government no longer needed to be justified theologically. It could suffice to make reference to state utility, but if the latter was not, in turn, justified with the Bible and theology as before then a wholly new sort of public discussion hove into sight, one that had previously been forbidden.

One thing led to another. What this public discussion needed was freedom of expression and of the press in order to communicate thoughts and ideas significant for the governance and maintenance of the state. But as yet there was no freedom to communicate, via the printing press or the import of indexed books, thoughts that were critical of the Government or the Church. As late as in 1706 an ordinance was issued against importing and disseminating harmful books which may have been the last ditch attempt of the era of absolutism to impose a general ban on the import of publications that made the Government an object of critical debate.

Court records – the principle of public access put to the test

A strikingly typical characteristic of intellectual life during the Age of Liberty was the curiosity-driven study not just of nature, but of the social functions of national life and this could take any number of forms: experiments with agricultural methods in order to improve harvests, economic studies to find a connection between economic efficiency and stagnation and so on. New institutions were founded, such as the Royal Academy of Sciences in 1738 and the ‘Office for Compilation of Tables’ (Tabellverket) in 1749. Of these two, the latter, a predecessor of the current Statistics Sweden, has particular bearing on the issue of collecting useful information about society and the economy. Tabellverket’s task was to collect primarily statistical data from a number of sectors in society for the purpose of pro-
viding the Government and public authorities with relevant information to guide their decisions. It was the first time in Swedish history that data was requested which did not necessarily have to do with what to tax and how much. Data collection by Tabellverket had to rely on the very best methods, and not least on access to information held by public authorities. There are few phenomena that offer such clear evidence of the attitude shift that was now in motion. 'A modern social science took shape [...] an anthropology in which man was no longer the image of God but had instead been transformed into numbers in columns, a crowd to make happy.'

The expression publique handling ('public document'), or allmän handling as we call it today (usually translated as 'official document'), matured into a legal term. How the nature of authorities' documents came to be regarded specifically as 'public' is something that has to be examined category by category. For reasons of space we will focus on one category - court records - since this particular category of documents came to play an especially important role in the development of public access and publicness. What opportunities did an individual person have of requesting access to, and printing of documents from a trial in which he had been a party, and to what extent was it possible for him to request and print documents from a trial in which he had not been a party?

Let us begin with a few brief procedural points. First of all, the trial procedure was in written form, except in the lowest courts. Second, the courts – even the lowest courts – were obliged to issue judgements in writing, which was the prerequisite for an appeal to a higher court; in other words, parties were as a rule entitled to receive their judgement in written form. Third, higher public authorities functioned very much in the manner of courts, which meant that the written process pretty much reigned supreme. Taken together, these circumstances laid the foundations for the concept of public access to documents; authorities' documents were by their very nature public. The issue of publicness now centred on if and how a party was entitled to print the public documents over which he had a right of disposition. It turned out that the state and individuals used the printing possibility for completely different ends.

We can start with an example from the period of absolutism: the records of the trial against Johan Reinhold von Patkul, a Livonian nobleman who in the 1690s had been one of the leaders of Livonian opposition to Charles XI's 'reduction' policy (which involved the recovery of Crown property previously bestowed or lent). Patkul's offences had primarily been about wanting to emancipate Livonia from Swedish dominion, and in 1694 he was sentenced in absentia to death for high treason. Patkul was apprehended ten years later and executed under cruel forms in 1706. In
the writing of history that followed, Patkul was either portrayed as a vile traitor or as a martyr and champion of liberty. The court records could be used – with consciously one-sided selection, of course – to prove the truth of either story: Patkul as a noble martyr or Patkul as a traitor of the vilest sort.29

The printing of the Patkul documents showed first how, with distorted selections of documents from the process, it was possible to prove one interpretation and dismiss another, and second how the state was unable to prevent the printing of court documents abroad – which is what Patkul’s supporters did, thereby putting them beyond the reach of the Swedish censor. So the door was opened to making the documents ‘public’ without domestic censorship being able to do very much about it. The censor’s reach did not generally extend across national borders; however, if Swedish authorities got hold of any publication by Patkul’s hand then it would be nailed up next to the pillory so that the state’s symbolic power to punish might at least be demonstrated.30

The Crown could have court documents printed from cases of particular state interest. A good example from the very first year of the Age of Liberty, 1719, concerns the documents from the proceedings against Charles XII’s foremost counsellor, Baron Georg Heinrich von Görtz. After the death of the king, Görtz was sentenced to death. He was executed on the same day that Queen Ulrika Eleonora signed the 1719 Instrument of Government. Thus the Age of Liberty was ushered in with what might be regarded as a miscarriage of justice, but the new Government needed to legitimise its reckoning with absolutism by spreading as many aggravating details as it could possibly find about Görtz’s role in the mismanagement of the realm.31 This was why the court documents needed to be printed and distributed. Consequently they were given a ‘public’ character.

The publication of court documents, as it occurred in the Görtz case, gave the Government the opportunity to show its resolve as well as to blame someone else for serious mistakes. Two further cases may serve as examples, both linked to lamentable wars.

The first is from 1741. In the summer of that year the Estates decided, under the leadership of the Hat Party, to declare war on Russia, which proved to be an ill-prepared venture that rapidly ended in military disaster. The Hat leadership, however, shifted the blame onto the military commanders, Lewenhaupt and Buddenbrock. They were sentenced to death by an Estates Commission and were executed. The court documents were printed for the enlightenment of the public with the obvious aim of deflecting criticism from those who were politically responsible onto the high-ranking officers who had led the operations.32
The other example concerns Sweden’s unsuccessful participation in the Pomeranian War, 1756–62. Politically and financially, the war effort was even less well prepared than in 1741, Swedish commanders kept getting replaced and – in an expression that became almost a stock phrase – the Swedes entered the war like foxes and ran out of it like hares. Still, the punitive hand once again struck the military command alone, not the political leadership that had brought about the entry into war. Courtesy of the printed court documents, the reading public were served with exactly the picture that was politically desirable as concerns the issue of responsibility.\textsuperscript{33} And once again, making them public had had the aim of deflecting responsibility from the King and Council. However the side effect was also the same as before: if court documents could be printed by the Government, that meant they were public.

Of a somewhat different character in the genre of political court proceedings were the documents from the trial against the personal physician of Frederick I, Alexander Blackwell, a Scot who was sentenced to death in 1747 for attempting to persuade Frederick I to promote rapprochement between Sweden and Great Britain and, in return for compensation from the British public purse, to consider abdicating in favour of a British prince. How much substance there was to Blackwell’s conspiracy was never really established, but the proceedings, held in the greatest secrecy, were nevertheless diplomatically delicate. Still, considerations concerning informing the public demanded that documents be published, but only to an extent that was commensurate with diplomatic confidentiality. Only some of the documents were therefore printed, while the majority were put under seal in the National Archives.\textsuperscript{34} The management of the Blackwell documents showed that publicity had to be combined with secrecy where this was deemed necessary.\textsuperscript{35}

But it was not only the highest government powers that had court documents printed on appropriate occasions. Private citizens did too, not least in disputes about inheritances where bitterness and lingering resentment have, of course, had their very own field of play since time immemorial. The printing and distribution of court documents became a means for the losing parties to fan the embers of fading legal fires. Since there were no rules for how the selection of documents was to be made, parties could pick and choose rather freely among the files, and of course chose to print only documents that supported their own claims.

The publications that emerged from the presses could thus be highly wilful and distinctly ignominious for the counterparties, which was noted by the drafting committee that drew up the Code of 1734. This committee recommended a closing of the ranks, the Government issued a directive
to the courts and in 1735 the high courts published a writ concerning the conditions for printing court documents.\textsuperscript{36}

But that was not the end of it. In the summer of 1738 the Council again considered the drafting committee's report on the printing of court documents. The matter was submitted to the Estates, and they referred the matter to the legislative committee of the day, the Justice Committee (justitiedeputationen).\textsuperscript{37} The Estates approved the proposal presented by the Committee.\textsuperscript{38} On 10 November 1738 the Government issued precisely the rules that had been requested by the drafting committee and the Estates. So what did the new rules entail?\textsuperscript{39}

There were different opinions as to the meaning of the right for claimants to print their correspondence during the course of the trial, and the verdict thereon issued by the judge, the rules said. They therefore prescribed that a party who wished to print his own documents had to send the entire dossier of the trial to the printers, which meant the counterparty's documents as well, and also had to exclude anything that might be perceived as abusive, offensive or disparaging.

Did this mean, then, that censorship was suspended prior to printing? No, the censor had to ensure that no document had been excluded from the dossier, and that offensive expressions had been removed: ‘Therefore the judge who last judged in the matter, in particular the reporting judge or, in matters where no reporting judge is present, one of the members of the panel, should go through the documents and exclude anything offensive found in them that cannot be deemed to throw light on or confirm the facts of the case.’ It was then incumbent on the court to make sure that the documents were copied in the right order, that nothing was excluded and that the copied text really was an exact copy of the original. Only after this attestation by the court could the censor grant printing permission. For anyone who was not a party to the case, however, there was no express right to request access to or print documents. It would perhaps be reasonable to say that in 1738, legislation had nonetheless reached halfway to a principle of public access and halfway to press freedom. There was freedom to print and distribute public documents, but this remained under the supervision of the censor. Suddenly the censor had become the guarantor of quality print products reaching the hands of the public!

The number of printed court documents increased markedly after 1738. The collections at Sweden's National Library include only a couple of dozen printed court documents registered until 1738. During the 1740s and 1750s, their number grew culminating in the 1760s.\textsuperscript{40} This gives us reason to believe that the term 'public document', at least where court documents were concerned, had now begun to take on a more substantial form, and
furthermore that the content of these official documents could be generally distributed by means of printing. If nothing else, we can begin to discern here how the right of access to an official document begins to become connected with the right to also disseminate the document through printing. It was of course precisely this combination that would be at the heart of the 1766 Freedom of the Press Act.

The notion of enlightenment and the practice of censors

Enlightenment philosophy, which began to affect Sweden-Finland in earnest around the middle of the 18th century, included press freedom as an important component – and press freedom was understood to be the right to write unconditionally and without hindrance by state censorship. It was particularly about getting rid of religious censorship of the sort that had plagued the nations of Europe since the days of Gutenberg. With the publication, beginning in 1751 and led by Diderot, of the monumental Encyclopédie, learning and knowledge centred on human rationality became available to Europe’s elites. The many contributing authors included Montesquieu on politics, Turgot and Quesnay on economics and civics, and Voltaire on a number of varied subjects. But the French Enlightenment also had an influential parallel in England and Scotland, with Locke and Hume as the leading protagonists, and a little later also Adam Smith and other economists. The works of these writers were translated into both French and German, making their ideas also available to readers who did not understand English.

The emphasis on the ability of human rationality to create new knowledge with the help of empirical methods of course also implied demands for freedom, without limits and conditions on truth-seeking imposed by the state and the Church. And once the truth was deemed to have been found, it had to be possible to communicate it to the learned public, which required press freedom or minimal censorship.

In fact there were two different perspectives on freedom. One was justified on the basis of rights: press freedom was a human right. The other was justified by utility: if the state tried to prevent the spread of critical thought, this would ultimately hurt the state most, since deficiencies would never be brought to light so that they might be remedied. It was the utility justification that would be decisive for the victory of press freedom.

With history having reached the 1750s, the Kingdom of Sweden was found to be far from the constitutional and philosophical ideals briefly
described above. This raises questions about the censors themselves: who were they, and how did they intervene?

During the period from 1687 to 1766 there were seven censors. It was no coincidence that all of them had academic backgrounds as historians. History was a political science of equal significance to the sovereign and those in power as the correct theology was to the clergy. A regime gained legitimacy through its history. Once religious orthodoxy had been left behind, historians, not theologians, were what was needed. Of the seven censors who worked between 1687 and 1766, most were academics with a background as historians, but none had a background in theology.

There is not much documentation regarding the first three – Nicolaus Rabenius, Claudius Arrhenius Örnhjelm and Gustaf Lillieblad. All of them had been professors at Lund or Uppsala. Rabenius had barely taken up his post when he died. Örnhjelm, a university librarian and national historiographer, intervened against what he felt was the inappropriate writing of history. Lillieblad was behind the Royal Ordinance of 1706 on the prohibition of printing and importing of harmful books but this did not, however, stop him from defending Cartesianism. This showed that even the censor supported the new philosophy and was thus in the ranks of those opposed to orthodoxy. The fourth, Johan Brauner, was a scholar of the classics who reputedly drilled his own secretariat staff on Latin poets which may explain why he was regarded as a ‘very rigidus censor on all new poets’. The fifth censor, Johan Fredrik Rosenadler, Professor Skytteanus at Uppsala and censor from 1716 to 1737, let pass a number of controversial publications on economics and was involved to some considerable degree in the introduction of the Royal Ordinance of 1738, on the printing of court documents. Rosenadler was appointed by the Chancellery College, as were his successors Gustaf Benzelstjerna and Niclas (Nils) Oelreich, both professors of history. During their tenure, censorship practice appears to have shifted towards an increasingly open and more permissive direction. But behind the scenes was always the Chancellery College which had the power to review the censors’ decisions when circumstances required.

Unlike the other censors, Gustaf Benzelstjerna left a journal to posterity covering the exercise of his office from 1737 to 1746 which provides a con-
crete insight into the values that governed his work as censor.\textsuperscript{46} The journal shows that the majority of the publications he examined were incidental in nature, such as wedding or funeral speeches, and thus trivial from a censorship perspective. After 1738 the scrutiny of court documents made up a considerable part of the censor’s work, but his was also trivial: it was a matter of ensuring that the dossiers were complete and that any abusive language between the parties had been removed or mitigated. However, the historical works that Benzelstjerna read were not trivial.

History was, as has just been pointed out, a risky business that had to be handled with both tact and sense. History professor that he was, he came down hard on what he perceived to be errors. This could often descend into outright composition corrections, with comments on language errors and spelling – not unlike the effort a seminar leader has to devote to weak student papers. The details of the journal show quite candidly the extent to which scrutiny was governed by the censor’s instinctive feeling for what was in line with religious decorum and deference to authority.

Even if Censor Benzelstjerna no doubt did his best not to cause more trouble than necessary, his journal shows that there was an opinion corridor – tacit of course but no less real or demanding for that. There were ideas and concepts in circulation that simply could not be printed lest the sensitive toes of religion or high authority be trampled. And in this connection, it should be kept in mind that the censor had to protect high authority in times past as well as present, at home as well as abroad.

Being a censor must sometimes have taken its toll on self-esteem, since the censor risked sinking into wretched falsification of reality. One example in the notes can bear witness to how the censor had to tack between the appropriate and inappropriate, always holding up a finger to the wind blowing from his superiors in the Chancellery College.\textsuperscript{47}

Let us now look at how this system ran straight into a brick wall when censorship in the 1760s was meant to determine both how the fundamental laws \textit{had to} be interpreted and economic policy \textit{should be} drawn up, as inflation tore through state finances and individual savings like wildfire.

Was there only one single correct interpretation of the fundamental laws?

Absolutism was abolished by the Instrument of Government of 1719.\textsuperscript{48} And it was made clear in the Instrument of Government of 1720 that the polity rested on two ideals. On the one hand, there was a wish to return to the constitutional tradition which had been characterised by the medieval
codes and by the Instrument of Government of 1634, and on the other there was a connection with continental theories of natural and treaty law that made the Estates the bearers of popular sovereignty. The latter did not prevent both the Instrument of Governments of 1719 and of 1720 from opening with the declaration that unity in religion and customs of worship was the very foundation of lasting rule. The division of power between the King and the Estates that had characterised the Instrument of Government of 1720 was gradually toned down. Power was concentrated in the Estates following a process which only reached its completion after the resignation in 1738 of the President of the Royal Council, Arvid Horn.

The Estates functioned under forms laid down in fundamental laws, the Instrument of Government 1720 and the Riksdag Act of 1723. Article 48 of the Instrument of Government included a prohibition against disclosing records of estate or committee meetings. As we have seen, this was the way things had been since the 1680s. The ban in the Instrument of Government is revisited in the Riksdag Act, adding specifics: no records of estate or committee meetings could be disclosed or ‘be provided by anyone, whoever they may be, or be delivered to anyone but should instead be kept well and safe in its place’ (Article 22 of the Riksdag Act 1723). In other words, no outsider could demand to be given access to Riksdag documents.

The obligation to confidentiality was spelled out in detail in the Riksdag Act. The members of the Estates swore a special oath (Article 10), in which they promised ‘not to reveal to anyone that which should be kept quiet and secret from estate meetings, or enter into any conversation about such matters of the Estates of the Realm with any person, whoever they may be, highly or lowly, national or foreign’. A similar oath was taken by the secretaries of the Estates, in which they pledged not to disclose anything that had passed during the Estates’ deliberations (Article 11).

Certain matters required increased secrecy, e.g. matters of foreign policy, defence and the financial circumstances of the state. Such matters were referred to the Secret Committee, whose members ‘are entirely forbidden, during a sitting Riksdag, from speaking to or being in the company of the ministers or emissaries of foreign powers’, unless the Committee gave them special permission (Article 18). Considering that the politically most critical matters were referred to the Secret Committee, there was also an increase in general secretiveness. The Riksdag was a closed world to which no unauthorised person had access, and the ban on members of the Secret Committee having any contact with representatives of foreign powers was well advised, as agents of foreign legations tried, by hook or by crook, including bribes and offers of subsidies, to guide Swedish policy in the
direction they wished. The story of Alexander Blackwell’s sorry fate was a case in point.

But the gig would soon be up for Riksdag secrecy as well. Even during the 1720s, documents were being sent for printing that were not purely ceremonial in nature – documents such as the Speaker’s salutations to the King at the opening and closing of the Riksdag, the King’s speech in response, or Riksdag decisions. Documents from the Secret Committee were printed as early as in 1727. Printed lists of matters before the Riksdag began to be produced in 1738. In around 1740, individual Riksdag members began printing their own plenary speeches, albeit only a fairly small number at first. The extent to which the court documents against Görtz and the generals, for their ill-starred wars, should be regarded as Riksdag documents is really a matter of taste; but the processes were held before commissions appointed by the Estates. At any rate, in 1747 the Secret Committee’s records regarding the Finnish War were printed, but that was just one of many printed records from the Riksdag’s committees. Publicity increased markedly in connection with the 1755–56 Riksdag, e.g. by the Estates printing documents about the ‘enforcement of the fundamental laws’ or ‘Acta publica relating to Sweden’s fundamental law’. At the 1760–61 Riksdag publicity increased even more, now chiefly in the form of individual members’ private motions and proposals. But the Estates’ plenary records remained under the veil of secrecy.

Slowly but surely, then, some of the secrecy of the Riksdag’s activities began to dissolve. There was a reason for the change. Secretiveness had simply become counter-productive to the Riksdag’s ability to function. This change occurred over a short period of time in the 1760s and was related to determining the liability of the Royal Councillors of State – what later became known has the decharge procedure. During the 1760s
the *decharge* assessment became concerned very markedly with economic policy, i.e. the very lifeblood of the Hats’ programme.

However, the Hats used censorship to protect both their own constitutional interpretation and their own hold on power. The Hat-dominated Royal Council had banned critical discussion of the Council’s policy in 1750: what that had really been about was that the Estates were to be regarded as lacking the right to assess the Council’s liability or follow up the enforcement of current laws or statutes. The agreement following the attempted coup in 1756, whose goal had been to strengthen the King’s hand at the Council’s expense, gave the Council reason to try to crush the opposition. The leaders of the coup were arrested, tried and executed, and the King and Queen had to offer a humiliating apology.

On a theoretical level, the attempted coup was about restoring the distribution of power such as it was described in Instrument of Government of 1720. The men behind the coup interpreted this document to mean that there should be a balance between the power of the King, the Council and the Estates. In the Hats’ understanding of the law, however, the King’s role was constitutional, even ceremonial. This doctrine now had to be hammered into the public consciousness, which was done not only by means of the extensive publications about the enforcement of the fundamental laws and Acta publica, but also by means of ordinances stipulating that the fundamental laws had to be read out annually from church pulpits and in courts of law, and that youths in secondary school had to be taught the correct meaning of the fundamental laws.51 The Royal Council implemented this programme in practical administrative measures, acting with a zeal reminiscent of how it had tilted at heresy three-quarters of a century earlier. The battle against theological aberration had now been replaced by the battle against constitutional aberration. The Council also worked towards establishing a systematic account of the foundations of Swedish constitutional law that was in conformity with the Hats’ own interpretation of the constitution.

However, the Hats’ fight for their own political and constitutional creed did not stop at purely administrative measures such as those described briefly above. What could not be hushed up had to be defended via the printing press. It was a direct intervention by the Council that led to *En Ärlig Swensk* (An Honest Swede), a periodical that was published during the 1755-56 Riksdag with Censor Oelreich as editor. However improbable it may seem, the censor librarum thus did not only maintain his role as examiner of everything that was to be printed, but also published the periodical whose printing permit it was his task to consider.
The periodical was moreover financed out of the public purse, a corrupt use of public funds to say the least. Still, there was not much that could be done by those who disapproved. The confidentiality stamp served as protection against public access, and whatever confidentiality was impossible to seal was taken care of by the Censor.

And yet this combination of corrupt press practices and censorship could not silence the critics completely. One of those who took up arms against *En Ärlig Swensk* was Erik Wrangel, a Count who had been in the group of Royal councillors after the Hats’ takeover in 1738. Wrangel had become oppositional, however, and later joined the circle around the King and Queen. He was sentenced for involvement in the attempted coup to lose his honour, life and property but managed to slip out of the country and was forced to live in exile until his death in 1760, forever busy fighting the Hat regime with critical publications.

The most famous of Wrangel’s writings was a pamphlet published in 1756 and entitled *Constans Sincerus, Svea rikes tillstånd i kort begrepp, sammandraget och föreställt av J. Swedenschöld* (Constans Sincerus, the state of the Swedish Kingdom in brief, summarised and presented by J Swedenschöld). It is possible that this pamphlet, more than Wrangel’s involvement in the attempted coup, led an estates commission to sentence him to death. The pamphlet includes a letter to ‘Honestus’ (the honest one) which of course was an ironic reference to Oelreich’s ‘Honest Swede’. Wrangel chose his words with clear intent. Constans Sincerus can be rendered ‘the unwaveringly sincere one’, while ‘Swedenschöld’ was the antithesis of the Honest Swede: *schöld* is ‘shield’, so he was Sweden’s shield. The shield could not protect Wrangel himself, though. The estates commission sentenced him to death and ordered that his ‘beguiling libel’ be burned in public by the executioner. It was more or less the same symbolic treatment met out to Patkul’s writings of a half-century earlier. There is scarcely any example from the 1750s in which censorship policy was as brutal as in Wrangel’s case.

But Wrangel was joined by other critics, one of whom was Peter Forsskål, a hotspur who was part of the rather wide circle of Linnaeus’s disciples. At the heart of his ideas about management of the state was the right for individual citizens freely to form their own opinions on important national issues. This included the right to criticise the Council’s economic policy. Forsskål’s ideas about state finances were neither new nor theoretically profound. When he presented his small publication, *Tankar om borgerliga friheten* (Thoughts on civil liberty), in 1756, it received Censor Oelreich’s imprimatur. In Forsskål’s view, the absence of civil liberty made both scientific and economic progress impossible. That was too much for the
Chancellery College which, it would be reasonable to assume, took orders from the Royal Council. The College reviewed Oelreich’s printing permit and forbade Forsskål to present the work as a dissertation in economics. The book was printed despite the ban on its distribution; the ban only made it more sought after and more widely read.

Why, then, were Forsskål’s ‘Thoughts’ so pernicious? The simple explanation, which was voiced even by contemporaries, was precisely that Forsskål had advocated changes to the fundamental law of a kind that ran counter to the Hats’ understanding of how it should be correctly interpreted. In order to communicate his observations to a politically interested public, Forsskål needed press freedom.

Forsskål was not the first critic to attack the Hat-dominated Council, but his words hit a weak spot in the Hats’ political orthodoxy. The Chancellery College therefore had to firmly establish that there was only one correct interpretation of the fundamental laws, namely the Hats’. As a rebel, Forsskål was possessed of admirable courage. He challenged the political establishment head on, defended himself emphatically before the Chancellery College, demanded disclosure of the documents of his own case, and fought for the right to think freely as well as to have his thoughts disseminated freely among the general public via the printing press. It did not improve things for the Chancellery College that its handling of the Forsskål case turned into a display of bureaucratic bungling. The censorship emperor, it turned out, was not wearing much in the way of clothes when the winds of criticism began to blow.

Forsskål’s little publication about civil liberty was not particularly original, especially if we compare it with e.g. Nordencrantz, Christiernin and Chydenius, or with British or continental works on statecraft and economics. His ‘Thoughts’ was nevertheless an important sign of the times. The treatment of Forsskål showed, as in the case of Wrangel, how narrow the period’s corridor of politically-correct opinion really was. It was enough for Forsskål to imply that the system of government had to be changed for the machinery of censorship to rumble into action with full force.

1760–1762 – Censorship nears the end of the road

The censorship system of the Hat regime was finally broken when the Estates had to solve the crisis in public finances. It became impossible for it to use censorship and the confidentiality stamp to defend itself against increasingly forceful attacks by the opposition which were connected above all with the decharge assessment. The Riksdag Act of 1723 included the
rules and regulations governing the Estates’ scrutiny of how the Council, since the previous Riksdag, had managed its deliberations and what positions it had taken on domestic as well as foreign affairs. This procedure was called, by tradition, a decharge assessment, and would lead to one or more decharge reports. The decharge assessment has been held in the Committee on the Constitution since 1809, but during the Age of Liberty the forms of the decharge procedure had not yet become fully fixed and concise. Eventually, however, the assessment came to be carried out in the Secret Committee in consideration of the fact that many of the matters under scrutiny, such as foreign policy and public finance issues, were classified.

The assessment was carried out by reading the Council’s records. When errors were discovered within the Council’s remit, the erring councillor or else the entire Council could be held liable. The procedure was one of criminal law during the earlier part of the Age of Liberty, since errors in the discharging of Council duties were either malpractice or malfeasance, and primarily breaches of fundamental laws.

When Baron Görtz was convicted and sentenced to death in 1719, it was for errors in discharging his Council duties. The judgement was formulated more or less in the manner of a decharge decision. But Görtz’s death sentence was not unique. In 1727 another councillor was sentenced to death for what was regarded as a serious error in discharging his Council duties. The fact that the Estates took the trial route when holding councillors to account was partly because their office was regarded as being for life; forcing a councillor to resign was only possible by means of a guilty verdict in a criminal case. Decharge accountability was thus held ‘juridice’, to use the terminology of the period.

During the 1750s a ‘politice’ liability was introduced alongside the ‘juridice’ accountability. This was given a different justification: a councillor remained at the Council table as long as he had the confidence of the Estates; if he lost their confidence he could be dismissed (licentieras), i.e. resign from active duty but maintain his emoluments. The change had to do with the development of party politics after the fall of the Horn Administration and the assumption of power by the Hats in 1738. When Councillor Samuel Åkerhielm and three other councillors lost their posts in 1747, the Secret Committee wanted to set an example by putting the councillors on trial. Three of them were acquitted by the judging commission, while Åkerhielm tendered his resignation. The Committee had to give in, and the principle of ‘political accountability’ had been instituted through practice. Åkerhielm was dismissed (licentierades).

It would not be until the 1760–62 Riksdag, however, that the principle of political accountability for Royal councillors definitively replaced their
legal accountability. It was a shift in practice, with no change to fundamental law. The party groups were now more heterogeneous than ever. Subgroups with clashing interests had emerged within both the Hat and Cap parties. The reason internal party strife became as complicated as it did was above all to do with the woeful state of public finances and the lack of any consensus as to how the economy might be improved. The Council had tried, for example, to rescue the deficit – caused not least by the Pomeranian War – by doubling the supply of banknotes, which in turn led to runaway inflation that was devastating for wage earners, lenders and all manner of small businesses, but very profitable for all manner of speculators and middlemen.

Accountability now became so complicated that the matter of *decharge* could only be handled ‘politice’, i.e. as a question of the confidence of the Estates. Scrutiny of the Council’s records revealed that the Council had been in breach of the Instrument of Government by entering into the Pomeranian War without, as was required, obtaining the consent of the Estates first. Taken thus far, it was possible to convict the Council of breaching fundamental law, i.e. ‘juridice’. It was of course true that the Council, as we saw in the section on court documents, had tried to shift the blame for the sorry course of the war onto the highest military command, but that was no help during the *decharge*. It was established that the military fiasco had not been the fault of the generals alone. A great deal of negotiating between the parties kept the matter out of the courts. Three councillors were dismissed on purely political grounds, but were later pardoned and re-entered active service.

However, responsibility for the mess that public finances were in was much more complicated in nature than the issues of responsibility for failed war ventures. It was a question of financial blunders born of the councillors’ ignorance of economics and of misjudgements, and there was no remedy for these in the Instrument of Government – particularly as not even the academic economists were able to agree on the connection between the money supply and fluctuations in the value of money. It goes without saying that under these circumstances accountability could only be applied ‘politice’, which led to a veritable landslide of constitutional case law during the Age of Liberty. Evidence requirements for malpractice in the discharge of Council duties could all of a sudden be lowered to a level well below what was required in criminal cases. It was enough for a councillor to have lost the Estates’ confidence for him to be forced to resign. The principle that a government cannot remain in power if it lacks the confidence of the majority was suddenly introduced without any constitutional change!
A modern Riksdag member would probably have felt quite at home in this parliamentary environment – had it not been for the confidentiality contortions of day-to-day parliamentary work. The lack of public access turned out to be a major obstacle to the smooth functioning of the decharge procedure. Without openness and publicity, there was no chance of comprehensively discussing government liability, particularly as the learned economists themselves could not agree on what was wrong with economic policy, or how errors should be put right. Disputes in economic theory were not resolved by imposing a thought ban on certain scientific points of view. That might have been possible in 1660, but was definitely not so in 1760.

The key figure in putting the issue of press freedom back on the agenda was Anders Nordencrantz. No one linked responsibility for the sorry state of public finances with press freedom the way he did. Why was that?

Back in the 1750s Nordencrantz had already voiced a fundamental criticism of the Hats’ economic policy in general, and of the influence of large company owners in particular. He developed his political ideas and beliefs not least as a Riksdag member but also as a commerce councillor and member of a number of commissions and deputations. The contrast to Forsskål could hardly have been greater. While Forsskål was an unaffiliated man of letters, Nordencrantz was a factory owner and high official with one foot in the writer’s den and the other in the civil service and the Riksdag. We can skip Nordencrantz’s biography here, and instead refer the reader to the chapter devoted to Nordencrantz in this volume. At issue here are his efforts for press freedom, and the connection between press freedom and Hats’ responsibility for the economic crisis.

Anders Nordencrantz’s criticism of the political system was concerned not least with how the Hats’ tenure in government had created corruption and favoured individual interests, but his criticism would have had a hard time getting at any of these ills due to the secretiveness of the Council and the Riksdag, the ban on publishing estates and committee records, and not least because the Hats had stifled necessary and well-founded criticism by controlling censorship. Censorship was thus contrary to national utility, which made Nordencrantz call for freedom of writing as well as public access to documents. His political programme from 1760 had already been
published for the 1756 Riksdag in the form of five publications of which one, aimed directly at the censorship system, had been confiscated. Just like Forsskål and Wrangel, then, Nordencrantz was a victim of censorship, but in taking on Nordencrantz – unlike Wrangel and Forsskål – the Chancellery College had bitten off more than it could chew, for what did its lawyers know about the connection between the amount of money in circulation and inflation? Economic equations could not be solved by censorship.

Nordencrantz’s polemical pamphlet from 1760 began the political reckoning with the Hats, but victory would only come at the following Riksdag, in 1765–66. In 1761 he followed up the attack on the Hats with Tankar om frihet i bruk av förnuft, pennor och tryck (Thoughts on freedom in the use of reason, pens and printing) which contained penetrating criticism of censorship and a plea for press freedom. The following year he penned yet another attack on the Hats’ economic policy, this time with the national bank as the main target – but once again the Chancellery College found his ideas so offensive that the publication was banned.

Nordencrantz was not alone in raising his voice about the cause of the crisis in public finances, which made the censorship task of the Chancellery College none the easier. The chorus of criticism included Pehr Niclas Christiernin, Professor of Economics at Uppsala from 1769, who used British economic theory above all to show that the Hats’ method of printing money on a grand scale had caused price increases and inflation, much to the gain of speculators and middlemen but much to the loss of just about everyone else. Nordencrantz and Christiernin disagreed on the causes of inflation, which must have made their contemporary readers realise that if the foremost minds within the discipline of economics were at loggerheads, the lawyers of the Chancellery College would be wise to hold their peace.

In Nordencrantz’s writings there was an ambition to reach political solutions in dealing with social and economic problems which could appear objectionable in contemporary eyes. His economic approach can be described as reformed mercantilism, marked by writers in the circle of the encyclopaedists as well as by British writers including Locke and Hume. Unlike most of his contemporaries, Nordencrantz read and spoke English, which contributed to his becoming a cautious advocate of the British-based part of the Enlightenment project. His pragmatism opened the way for political solutions that were predicated on the individual citizen having the right both to criticise and publish. The very idea of discharge was changed in the sense that the general public was also assumed to be able to participate in this public discussion. This approach was quite clearly British. This does not mean that Nordencrantz was a democrat in our modern sense of the word, but he dismissed the notion that power over the state was God-given
or that it sprang from a social contract that could not be changed when new groups in society wanted to gain influence over society’s governance. This made him an important promoter of the idea that openness must apply for official documents, as well as of the freedom both to discuss and publish what was considered, on dubious grounds, necessary to keep out of the public eye. Under these circumstances it seems quite natural that Anders Nordencrantz has come to appear to posterity as the most prominent figure in the history of press freedom in Sweden–Finland.

When the Riksdag adjourned in 1762, however, no settlement had been reached on the issues of public access to documents and censorship. A special committee had been appointed for the matter of press freedom, and had made a statement in favour of allowing freedom of writing, at least within certain limits, on political and economic subjects, and of giving the public access to documents from courts, colleges, consistories and other public authorities – but not to the Council’s documents. Openness had also been proposed for certain Riksdag documents, such as the committee records and reports but not for the Estates’ records. However, any printing presupposed the censor’s imprimatur, which meant that the Office of the Censor would be maintained. The latter had also been advocated by Nordencrantz who probably wanted more haste and less speed in order to reach a solution eventually. This was tactically astute as the Committee’s proposal had to be reviewed by a Grand Joint Committee before it was ready to be referred to the Estates. It went as feared. The opponents of the committee proposal managed to delay the entire matter. The Riksdag was adjourned with the committee proposal still waiting for the Estates’ decision.

A proposal for the printing of the Nobility’s minutes was tabled but met with no success. But changes did occur quietly in the sense that Riksdag documents were now published as excerpts of the Estates’ records and private member’s motions, albeit to a limited extent.62

1765–1766 – Press freedom and the principle of public access both victorious

When the Estates reassembled in 1765, the Riksdag had changed hands. Resentment against the Hats’ economic policy had been vented in the general election in the autumn of 1764. The Caps were in the majority, taking over both estates and committees, not least of which the important Secret Committee.

It was obvious that the new majority would undertake a severe inquisition of the old Council. The Caps’ attack came after reading the foreign
policy records of the Secret Committee and the records of the Banking Deputation. Seven councillors were declared no longer in possession of the Estates’ confidence and were dismissed.

The declaration of no confidence against the seven Hat councillors presented the Caps with a communication problem; they now had to demonstrate the reasons for the no confidence declaration to both the Estates and the public – to maximise, so to speak, the ‘politice’ liability. The means they chose was quite literally to put the cards, or the documents, on the table for public perusal. This was carried out by having the Secret Committee – at the very heart of the Riksdag’s secretive-ness, and in violation of the Riksdag Act – print its report about the state of public finances, and the records from the examination of the national bank and the National Debt Office. 

Individual Riksdag members’ private motions and proposals were printed. The confidentiality surrounding the Riksdag’s work was thus relaxed several months before any decision had been made on the press freedom issue.

It is an open question whether a Riksdag body has ever, before or after, so brutally and comprehensively dressed down a just-defeated government – and it was done with the help of the printing press. The Committee did not mince its words on the subject of the state of the nation: the public was informed that the country was headed for bankruptcy. Once the Committee had had its say, the Estates took over, making concrete decisions. The flagrant mishandling of the national economy was of course the focus of the discharge, but other state functions such as the unreliable justice system were also fair game. The Estates demanded respect for laws and ordinances or, in short, that courts, prosecutors and bailiffs pulled up their socks.

What was required was both an openness concerning ‘public’ activities and the freedom to print documents held in the archives – as well as using other methods to inform the public of discoveries made there.

The way in which our first Freedom of the Press Act was shepherded through the Riksdag need not be dealt with here. Relying on her close reading of the archived material, Marie-Christine Skuncke gives us a fascinating guided tour through committees and estate deliberations.
Historiography has long associated one person in particular with the victory of press freedom at the 1765-66 Riksdag. Anders Chydenius (1729-1803) can compete with Anders Nordencrantz as the apostle of press freedom.66

Chydenius, who was a rector by profession, was elected in 1764 as representative of the Ostrobothnian clergy. The regulation of trade navigation had delivered a severe blow to the coastal towns of Ostrobothnia. Chydenius presented a proposal for a solution in April 1765, in the publication Källan till Rikets Vanmakt (The Source of Our Country’s Weakness), which was based on documents from the Royal Commerce College archives – which was of course way beyond public access. Källan till Rikets Vanmakt showed, in black and white, how the policies pursued had benefited the wholesalers and trading houses in Stockholm and Gothenburg at the expense of other businesses.

Chydenius’s next publication followed in July of the same year, and in it he condemned the Hats’ subsidies to export businesses and regulation of agriculture. The state’s task, in Chydenius’s view, was instead to find the right balance between different export sectors. In other words he expressed a liberal view, in the modern sense, and this was of course accompanied by advocacy of press freedom and public access to documents. This was demonstrated by Chydenius not least in the publication entitled Den nationnelle winsten (The National Gain), from 1764.

The publication on the national gain could be read by his contemporaries as a presentation of economic liberalism. But what was not clear, other than indirectly, was that the entire book would have been impossible to write if Chydenius had not had access to the Commerce College archives - which of course he did, as a member of an estate committee – and had thus been able to read precisely the kind of documents that showed how trade policy had been driven by capitalist special interests, to the detriment of most other people. Ergo, without access to public documents, no chance of writing about public finance abuses. The press freedom problem was thus, for Chydenius, linked to the governance of state finances in the same way it had been for Nordencrantz.

There was one Chydenius publication in particular that collided with censorship, Rikets hjälp genom en naturlig finance-system (A Remedy for the Country by means of a Natural System of Finance). In it, Chydenius demanded nothing less than a new monetary policy. The publication, which had received printing permission from Censor Oelreich, was considered insulting not least to the originators of the finance plan that had just been adopted. This led to what can only be described as bargaining over the printing permit. Oelreich was forced to retract his imprimatur, but the Clergy nonetheless granted their permission for the completion of print-
ing. The Nobility reacted, demanding an explanation from the Clergy, but the clerics replied evasively that their permission only gave the author the right to print for his own account. The campaign against Chydenius began to pick up steam, and the Secret Committee summoned him to a hearing in order to extract an apology from him. The whole affair ended on 3 July 1766, when the Clergy voted by 21 votes to 12 to strip Chydenius of his membership of the Riksdag.67

Was the campaign within the Nobility and Clergy an act of revenge for Chydenius’s efforts as Secretary of the Committee that had brought the press freedom question to a happy conclusion? Probably not. Lord Ture Gabriel Rudbeck, the Speaker of the Nobility and a Cap who had taken the Chydenius case to the Secret Committee was himself among the press freedom advocates and had been Chairman of the Press Freedom Committee and proposed, in 1762, the printing of the Nobility’s minutes. Was it simply the case that Rudbeck’s vendetta against Chydenius was born of Chydenius having used his freedom to question the finance policy plan adopted via the printing press? The plan in question was one that Rudbeck himself had backed, after all! Chydenius, at any rate, left the Riksdag but was soon proven right regarding financial policy. Chydenius’s predictions came to pass, and his adversaries were not re-elected to the Riksdag in 1769. Chydenius, for his part, was re-elected in 1778.

It is an unavoidable conclusion, when summarising Chydenius’s career as author and inspirer of the press freedom issue during the 1760s, that as a theoretician he was on a level with Nordencrantz – but that he had one feather in his cap that Nordencrantz lacked. Without Chydenius as member of the Press Freedom Committee, there most likely would not have been any Act – but on that achievement I refer the reader to the contributions to this volume by Gustav Björkstrand and Marie-Christine Skuncke.

Freedom of the Press Act 1766 – the conclusion of a remarkable legal development and the start of a new one

The right to print and distribute public documents had been argued over throughout the Age of Liberty, which was not the case for the right to print and distribute ideas and thoughts to form opinion. It was therefore perfectly logical for the Freedom of the Press Act of 1766 to put the principle of public access at its centre – more so than press freedom as such. The originality lay in the 180-degree turn executed on the question of public access to documents: public access would be the default, secrecy the
exception. It would be made clear which documents could not be made public. General freedom of the press was laid down in Article 5\textsuperscript{68}, while the preceding sections specified the exceptions.

However, the right to access and print public documents was formulated after a lengthy and detailed list of the documents, courts and authorities that were covered. There was actually a reason for this prolixity, which had been aired in the Press Freedom Committee as early as the spring of 1765: the suspicion that the bureaucracy, large sections of which was still sympathetic to the Hats, would not understand the import of the new freedom of the press if the law was formulated in terms that were too abstract. What was necessary, therefore, was to prevent all opportunities for individual officials to refuse to give access to public documents with reference to the applicant’s inability or refusal to state what the requested documents were going to be used for.\textsuperscript{69} The Chancellor of Justice, who from 1766 served as the Estates’ own ombudsman, was appointed as special superintendent of the public’s right of access to official documents.\textsuperscript{70}

Stockholm, in a painting by Johan Svenbom from 1767, a year after Sweden was given its first act on freedom of the press. View from today’s Mynttorget over Slaktarhusbron, Blasieholmen and Lejonbacken. The Stockholm City Museum.

The Freedom of the Press Act did not provide for complete freedom of the press. There was still a prohibition against writing anything that was contrary to the pure Lutheran faith.\textsuperscript{71} Nor did it permit the questioning
of the system of government such as it was laid down in the fundamental laws, nor the use of condemning or disparaging opinions about the King, the royal family, the estates of the realm, officials or foreign powers or sovereigns. The Office of the Censor was abolished, as was the Chancellery College’s position as supreme censor, but even so the authorities could not quite relinquish the need for control, specifically of book imports: ‘As for the importation and sale in book stalls of harmful books, the supervision of this shall remain with our Chancellery College and the appropriate consistories, which shall see to it that no forbidden or beguiling books, whether on theological or other subjects, may be distributed.’ That sentence in the preamble to the Freedom of the Press Act could just as well have been written in the 17th century.

How then was liability for printed publications regulated when there was no longer any censor who could stamp his imprimatur on the publication? Liability was shared between the writer and the printer. If no writer was specified, the printer had to bear the entire liability. It was incumbent on the printer to provide each publication with a year and place of printing, as well as deliver six deposit copies to the Chancellery College, the National Archives, the National Library and the country’s three academies (Article 4 of The Freedom of the Press Act).

The regulation in the Act of the right to print public documents summed up the former opposition’s experiences of Hat regime censorship. The Act of 1766 largely reflected the entire period of history briefly described in this paper. Even elements of the censorship system of Royal absolutism – abolished in 1719 – remained after 1766, e.g. theological censorship and the stipulations on deposit copies.

Why was the Principle of Public Access to Official Documents included in a law on press freedom? We have, after all, kept the connection between the principle of public access and press freedom in one and the same law. The reason was that the printing press was the only technological means available in 1766 for disseminating thoughts, ideas and public documents. Anyone who sees some kind of judicial profundity in this connection is barking up the wrong tree. The legislators of 1766 might even have said, had they only been asked, that the Freedom of the Press Act was technology neutral. But in 1766 there was no other technology available for the purpose.

The Freedom of the Press Act was not the work of a few individuals. Prominent figures like Nordencrantz and Chydenius played important roles as catalysts, but they did not determine the outcome of the press freedom issue. The paramount determinant factor was how political life had changed during the ten years that preceded the introduction of the Act, and this in turn was linked to the flattening of the estates hierarchy that
had been going on throughout the 18th century but had increased markedly after 1750. The Hats’ struggle against the forces of opposition was about mitigating the effects of the ongoing social transformation, but that struggle had already been lost in the years after 1760.\textsuperscript{72} Without public access to documents and freedom of writing, the constitution of the Age of Liberty could not have been reformed to fit the new party structures that formed in the Riksdag from the 1760s and beyond.

It would be remiss not to assume that Enlightenment philosophy, in all its multi-faceted form, was present as a significant background factor, but the Freedom of the Press Act was far too contradictory to correspond fully to the values of the Enlightenment. It retained elements that the encyclopaedists, for instance, would have found impossible to accept – above all the censorship of theological publications.

The effect of the Act of 1766 was revolutionary nonetheless. The number of newspapers and other publications that emerged during the years up to 1774 was greater than during nearly the previous half century: more than one hundred, compared to the seventy that had appeared between 1720 and 1766.\textsuperscript{73} Considering the fact that general literacy in Sweden–Finland was at a high level compared to the European average,\textsuperscript{74} the Act created new opportunities for public debate and the exchange of ideas in society.\textsuperscript{75}

However, this positive image of the new press freedom should probably be shaded in a little to make the historical picture more balanced. The Freedom of the Press Act did not particularly affect the great mass of the population, it was a means of improving the internal debate among the educated and political elites. Nine inhabitants out of ten had no political influence whatsoever,\textsuperscript{76} and the only category of publications that affected this majority was, in the absence of ordinary newspapers, religious literature. But theological tracts were still subject to censorship. It is quite indicative that the Conventicle Act (\textit{Konventikelplakatet}), which prohibited individuals from holding religious meetings without the presence of a cleric, was introduced as late as in 1726, when pietistic and other unorthodox faiths had spread throughout the population – and was in fact not abolished in Sweden until 1858. It was only in 1781 and 1782 that adherents of the Jewish and Catholic denominations, respectively, were given permission – on rather discriminatory terms – to settle in the country. It must be cautiously assumed that they read their daily prayers from books that lacked the cathedral chapters’ imprimatur stamps. In other words, the state’s Lutheran clergymen could carry on chasing after theological deviations in the same way they had before 1766.

In short, the Freedom of the Press Act 1766 was not everyone’s precious property. When press freedom was subsequently stifled under the Gustavi-
an dictatorship, and then disappeared altogether,77 the ideals of publicity, public access and press freedom lived on in the public memory on either side of the new national frontier drawn between Finland and Sweden in 1809.78 Two separate countries, but with a great press freedom heritage in common.
Notes

1 Klemming, Andersson 1927.
2 Censorship and its institutional forms in Europe are not dealt with here; instead the reader is referred to Jonas Nordin’s contribution to the present volume.
5 Montgomery 2002.
6 The classical Apostles’, Nicene and Athanasian creeds.
7 This refers to the Uppsala synods of 1593 and 1595, at which the Lutheran reformation definitively triumphed.
8 Brusewitz 1916, p. 6.
9 Burius, entry on Ericus Schroderus, SBL (Svenskt Biografiskt Lexikon), vol. 31.
11 K. Br./Plakat (Royal proclamation) 15.7.1662 and 9.8.1663 re the writings etc. of Bishops Johannes Matthiae and Johannes Terserus. Årstrycket (former name of the Swedish Code of Statutes).
12 The rule about providing deposit copies has proven a veritable gold mine for latter-day research. It survived censorship and ensured that university libraries were provided with complete collections of everything that was printed in the country. So, it’s an ill wind…!
14 K. St. 5.7.1684 om alla nyskaffne verks censorande… (Royal decree about the censoring of all new works…)
15 K. Br. 20.9.1687 re prohibition against reprinting Riksdag decisions etc.
17 Pietism was a movement within Lutheranism that emphasised the personal experience of faith, and was critical in several ways of the dominant Lutheran orthodoxy. The importance of pietism grew after the 1721 peace, when Caroline soldiers returned from Russian captivity, where pietism had become common – perhaps due in no small part to the absence of theological supervisors and censors.
21 Aminson 1863.
22 Losman 1980.
24 Villstrand 2011, pp. 71 ff.
25 Placat till vidare upplysning av de förra utgångne religionsstadgarna…, 19.3.1667 (Proclamation for further information about the previously issued religious decrees…). Placat och Förbud om skadliga böcker införl mol 19.3.1667 (Proclamation and prohibition of the importation of harmful books). Årstrycket.
27 K. F. 10.7.1706 re harmful books.
29 Bring 1958, pp. 1 ff.
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30 K. Patentet 13.12.1701 re how to proceed with Patkul’s publications.
31 Bring 1958, pp. 3 ff.
32 Bring 1958, pp. 19 ff.
33 Bring 1958, pp. 6 ff.
34 Bring 1958, p. 9; Naumann 1924.
35 Bring 1958, p. 9.
36 Svea hovrätts publ. 10.4.1735 att skriftväxlingar i rättegångssaker [...] utslag kunna få tryckkap (Svea High Court’s written declaration that correspondence in trial matters [...] verdicts may be printed). Årstrycket.
37 The Nobility’s minutes 1738/39:3, p. 89.
38 The Nobility’s minutes 1738/39:3, p. 215.
39 K. F. 10.11.1738 vad vid domars och rättegångsskrifter tryckande vidare kommer att iakttaga (Royal regulation on what will further be observed in the printing of judgements and trial documents). Årstrycket.
40 Bring 1958, pp. 3 ff.
41 Dedering, entry on Gustaf Lillieblad, SBL, vol. 23.
44 Boëthius, entry on Gustaf Benzelstierna, SBL, vol. 3.
45 Burius, entry on Niclas von Oehlreich, SBL, vol. 28.
46 Published by Bygdén och Lewenhaupt 1924.
47 Journal of 23.11.1738 regarding a criticism of an historical account: ‘[…] then with a few necessary remarks that particularly concern the sensual inclinations of the regents, which may not be so freely censured, even though someone has previously stated the same that one therein claims, e.g. that King Charles II disdained all godly worship, that he debauched his own sister, on the impotence of Jacob II, and the greed of the Duke of Orléans etc […]’). Seeking the historical truth was not for the timorous, in other words.
48 There is a vast literature on the system of government during the Age of Liberty. For reasons of space, I will here refer generally to Lagerroth 1915, 1934; Brusewitz 1916; Carlsson 1964; Eek 1943; Lagerroth 1915, 1934; Linnarsson 1943; Manzén 2011; Metcalf 1987; Naumann 1911; Nygren 1998, 2009, 2013. For the history of the church, see Lenhammar 2000; Montgomery 2002.
49 The term ‘President of the Royal Council Chancellery’ corresponded to what we today understand by ‘Prime Minister’.
51 K. Br. 10.2.1757 on the public proclamation of the fundamental laws, and K. Br. 10.2.1757 on the teaching of the fundamental laws in the country’s upper secondary schools. Svea High Court’s letter of 16.3.1757 on the annual recitation of the fundamental laws at country and city courts. Årstrycket.
52 The Palace Chancellery’s proclamation of 18.1.1757 re the libel Constans Sincerus … Årstrycket.
53 See Ere Nokkala’s contribution ‘Peter Forsskål – The freedom to write and the Principle of Public Access’ in this volume.
54 Burius, entry on Niclas von Oehlreich, SBL, vol. 28.
55 K. F. 20.6.1727, 22.3.1736. Årstrycket.
56 Re the discharge and dismissal regimes, see Linnarsson 1943 and Nygren 2009.
57 The judgement, dated 11.2.1719, published in Årstrycket: ‘[…]’ ‘[…]’ that he, in discharging several highly important duties entrusted to him, turned most perniciously against the Realm of Sweden and its inhabitants with criminal ill will and harmful counsel and advice. […]’.
59 Re the dismissal regime, see Linnarsson 1943.
60 See Lars Magnusson’s contribution ‘Anders Nordencrantz’ in this volume.
63 Royal Ordinance for the promotion of the enforcement of the laws among the officials of the realm and its subjects 2.12.1766.
64 Annex to the Riksdag’s decision of 29.9.1766, item 7.
66 For details about Chydenius, see Gustav Björkstrand. ‘Anders Chydenius’ in this volume.
68 ‘[…] and everything that is not clearly contrary to the previously enumerated exceptions, is regarded as permitted to write and print, in any language or style of writing it may be composed, either on theological subjects, morality, history or any of the learned sciences, regarding public and individual thrift, the actions of colleges and officials, societies and associations, trade, businesses, crafts and arts, […] and other such things as may lead to the public’s benefit and enlightenment; and furthermore no one is denied the right to publish treatises on the laws of the realm and associated sections, in that each person, as long as the publication does not to any extent violate the […] irrevocable foundations of the constitution, has unimpeded freedom to state his thoughts on everything concerned with both the rights and the obligations of citizens, and which may serve in some way towards improvement or the prevention of deleterious consequences; which freedom should also extend to all laws and statutes in general that have already been or will hereafter be enacted.’
69 One of the committee members, Baron Gustaf Cederström – in a private member’s motion submitted to the Committee – used considerable verbosity to go through the entire public administration, from His Majesty’s Government to the lowliest courts and administrative entities, in order to make it clear that public access to documents must apply to measures and decisions at all levels of bureaucracy, even the state’s economic, trade and finance circumstances ‘which have either been made or may be made, referred to and executed as to their consequences or possible abuse, in order to inform citizens of what good as well what ill might come of them’. Nygren 1998.
70 The tasks of the Chancellor of Justice as guardian of press freedom were not regulated in the Freedom of the Press Act, however, but in the instruction for the office of the Chancellor of Justice. Nygren 2013.
71 And that the insinuation of deviant doctrines may better be prevented, all manuscripts which to any degree concern the doctrine and principal points of our Christian creed shall be overseen by the nearest consistory, and no printer, on pain of a fine of two hundred daler in silver coins, may issue such writings through the press without the consistory’s written permission, which should also be printed.) Article 1 of the Freedom of the Press Act. In other words, the imprimatur stamp was still to be used in the field of theology.
73 Manzén 2011, p. 376.
The Freedom of the Press Act of 1766 in its historical and legal context

75 Riksdag, kaffehus och predikstol ... ('Riksdag, coffee house and pulpit …') eds. Skuncke and Tandefelt 2003.
76 Regarding the social structure during the Age of Liberty, see Carlsson 1973.
77 Boberg 1951.
78 The reader is referred here to Cecilia Rosengren’s contribution to this volume.
DEVELOPMENT OF PRESS FREEDOM LAW
Public access to official documents and freedom of the press, before 1809 and after
– according to a Finnish view

Henrik Knif

How did the freedom of the press that became law in 1766 function in practice, and what kind of reactions did it give rise to? The idea here is to describe some reactions and draw some lines of development. As the year 1809 and the split between Sweden and Finland approaches, the Finnish twist to the problem moves more and more into focus. The separate development in the Grand Duchy of Finland will be sketched out and summarised for the decades after 1809. As an introductory, something about the positive consequences of freedom of the press in its application to everyday practice: how opposing opinions were publicly asserted despite there being a fear of discord in many quarters and despite there being discomfort in holding different views.

The point of departure here will be an unusually long and in-depth debate, to which there is good reason to pay attention – as a positive example of freedom of the press in operation – before focus below is placed on the defence of freedom of the press when it was, or appeared to be, threatened in various ways. Below, the intent is to observe the preconditions for publishing and the press as they appeared from the horizon of Turku – that is, with the Finnish provinces as part of the Kingdom before 1809, and then with Finland annexed as a part of the Russian Empire. It will become clear here that the context with Sweden and the Swedish press was not cut short all at once, but only slowly and gradually decreased in importance (never to be entirely dissolved).
The unease of conflicting views

In order to gain a better grasp of the eighteenth century, and prevailing ideas regarding the free public exchange of opinions, it is also important to listen to things that do not directly concern the points at issue – but rather concern the way of defending your convictions and the consequences of holding different views. Not infrequently, resentment against, and discomfort with, holding different opinions emerged. Holding different views often led to angst and a feeling that something was wrong. People who otherwise defended differing opinions could, in any case, share the perception that it was injurious to a society to be split into parties. This feature seems to be characteristic of an older eighteenth-century mentality – to some extent in contrast to a nineteenth-century mentality, and to a greater extent in contrast to the mentalities of more recent times. That is to say, in contrast to later times when the party system became institutionalised as the foundation of democracies, and when lively debate began to be seen as a mark of health in open democracies. Approaching eighteenth-century Sweden from the outlook of our time provides one with a fill about the Hats and the Caps (NB in later descriptions of the era). If, on the other hand, one make exclusive use of eighteenth-century sources, this splitting into parties appears less clearly expressed. It seems as though while people of the time were very aware of the split, they were uncomfortable with it – so that they did not readily wish to recognise (or do so more than was necessary) this splitting. And when there was talk of splitting into parties in the eighteenth century, it was not infrequently from the viewpoint of condemnation – all this discord seems to have been something that one was almost ashamed of and something one preferred to regard as a temporary aberration.

Characteristic of this position is a contribution to Dagligt Allehanda in 1771: “This cannot but give us Swedish men at home the feeling that things are being heard and read from the Riksdag such as eminent disunity, bitterness and gall in publications and in print, that people believe should have been banned from an enlightened age.” This was introduced into the newspaper with the postscript “Excerpt from a letter from Finland”. It has been noted by Lars-Folke Landgrén as an interesting example of how the open confrontation of opinions stung an inexperienced, possibly remote public whose representative here thus considered it enlightened to be of unanimous opinion.¹

It is not certain that the letter excerpt actually originated from Finland. It is quite possible, of course, but a headline of this kind (or similar) to an article was not unusual in the press of the time when someone from much
closer by wanted to make themselves an interpreter of the people’s voice (nor did an article of this kind come at an inopportune time for Gustav III who was acceding to the throne; in the following year he took revolutionary measures for the purpose of ending the split into parties).

Thus, among the public, people generally wanted to cling to the idea that the truth was one and indivisible: it did not lie in the middle, as it later became common to point out. On the contrary, the debaters of the time thought it should be possible to reason your way to what is right – to a conclusion that all enlightened people could then understand and comprehend. It was thus before the era of ‘interest’ politics, when compromises could be extolled and the truth relativised, in discussion as in political praxis.

This discomfort with splitting over opinions seems to have been generally widespread in Sweden, and on this point Sweden was no exception in Europe. On the other hand the exceptions – who in time would be praised – were made up of certain friends of the Parisian Enlightenment who tolerated contradictions of opinion to the degree that the instigator could call attention to the fact that he was ready to die for others’ right to express their opinions without sharing the opinions in question. This form of radical Enlightenment tolerance certainly made an impression, and it would have its own somewhat more moderate variations in Sweden as well. But this was not the attitude of the broader public in the eighteenth century – rather, enlightened tolerance of this radicality was emblematic of a later period’s idealisation of what came to be called the Age of Enlightenment.

There were, however, other signs at the time of how the conception of a uniform truth was cracking: the fact that in Sweden after 1766, government documents – including the votes of the legal system – were given publicity could do nothing other than undermine the idea of a rational truth that every upright servant of His Majesty applied in every situation. Clearly, these servants of the State had differing opinions on how the affairs of the Kingdom should be managed, or how the law should be interpreted.

Before turning to the threats against, and limitations of, freedom of the press that became reality in December 1766, the freedom of the press in operation will be reviewed: an unusually extended and long-winded debate that was fought out at the end of the 1770s. This may serve as one example of what kind of consensus-tearing issues could be freely handled with the freedom of the press in force during the 1770s.
A free press debate in practice

From 1778 to 1779, an exceptional debate took place in the Swedish press. It consisted of a large number of articles, and lasted for over two years. The subject was obviously a hot topic, as feelings ran high several times and those debating most often found themselves deeply divided. A conflict of opinions of this kind could be perceived as harrowing and unhealthy for society – from the point of view of those who put agreement first and were disgusted by discord (as discussed above). However, with the freedom of the press that was in force in the 1770s, the war of words that kindled this disagreement was permitted. The debate over whether servants could be counted as the equals of the farmers in a societal and legal sense did not encounter obstacles in the law – despite the fact that the issue concerned one of the fundaments of society.

The debate was primarily conducted in Dagligt Allehanda, but also in Stockholms Posten and Hushållnings Journal as well as in several independent pamphlets. Apart from the length of the debate, what is remarkable is that it touched on an economic and social issue that pitted property owners against the unpropertied. The issue concerned the law on hired servants, and whether those serving and the unpropertied should be considered as having the right to be in control of their own work, selling it to the highest bidder – as property owners were entitled to dispose of their own possessions – or whether the unpropertied, in their dependent position vis-à-vis the farmers, were charged with obeying and resigning themselves to where they were set to work without grumbling. In eighteenth-century Sweden, it was the duty of each and every person to work. The unpropertied themselves had no say politically, and were not represented in any of the estates of Parliament. One person who pleaded their cause – or who spoke for their rights as partners to an agreement – was Anders Chydenius. He wrote most of the contributions to this debate and was made a scapegoat for a large part of the sometimes more, sometimes less indignant criticism against the attempt at reform. As a rule, Chydenius’ opponents saw the matter as an issue of order, a question of discipline; for the farmers, it was an issue of a time-honoured right to decide on and dispose of the unpropertied without needing to ask their opinion. Against this outlook, Chydenius tried to take a perspective from below – to see the problems with the provisions of the law on hired servants from the viewpoint of those working as servants. Some thought he should keep quiet and let sleeping dogs lie about an issue where his viewpoints could be nothing other than jousting at windmills. The hired servant issue was thus perceived as an inflammatory subject, and, as such, quite unlike the more gallant debates
about coiffure or the fops à la mode, or the disputes of academic literary men about antiquarian finds.

Chydenius talks about hired servants as if they were people with rights: “They are people, and thus by nature our equals, born with rational soul and free will to inhabit the earth; they should therefore also be treated as people.” Since they themselves had no say, he said he was standing up in defence of the defenceless: “None of us may expect that the servants will defend their cause before the general public; I dare say that barely any of them know that the question of their freedom is at the highest level of review: who among them is capable of writing something in their and their brethrens’ defence? The rights of such a defenceless people must therefore be looked after with double tenderness [...].”

Chydenius put forth his argument, systematically and in considerable detail, in a pamphlet called Tankar, om Husbönders och Tjenstehjons naturliga rätt (Thoughts concerning the Natural Rights of Masters and Servants) that he authored in the summer of 1778. To arouse interest in the question, he wrote the passages quoted above in shorter form in an article that was published under the signature of Prodromus in Dagligt Allehanda in August 1778 – a forewarning that a bigger shot would soon be coming. The question of the hired servants was “at the highest level of review” because it was being processed in the Riksdag. The law on hired servants from 1739 had been taken up for new consideration, and Chydenius himself was involved in the issue in the committee work he was taking part in on behalf of the Estate of the Clergy. The law ordered that hired servants, farmhands and maids should be compelled to take a year’s service against a predetermined lower wage and free meals, bedding and a few articles of clothing.

No previous publication in Swedish had ever spoken to that extent about the rights of all people as Tankar, om Husbönders och Tjenstehjons naturliga rätt, as Bo Lindberg states in his commentary on Chydenius’ contribution to the debate. At that time it was also rare to assert that labour is a commodity, a property – the only one that the servants had at their disposal. In Chydenius’ reasoning, the servants are thus sellers who negotiate – contracting parties – and thereby parties on the same level as the farmers purchasing their labour. Chydenius’ reasoning clearly echoes a natural rights thought, particularly emphasising the human dignity – the humanity – of the very humblest. He formulates himself in a way that, for his time, was strikingly pregnant with the future, as Lindberg points out.

And the response was rapid. His primary opponent was Reinhold Antonsson, who argued that it was a non-issue, that Chydenius should keep quiet before he caused greater damage, and that he was criticising the prevailing conditions and social order – an existing, suitable mix of rich and
Public access to official documents and freedom of the press

poor – in vain. Antonsson was a member of the Estate of the Burghers in the Riksdag for Karlstad and Kristinehamn. Through acquisition of property and land, Antonsson – chief judge of a district court – had become a wealthy landowner in Värmland. He responded to Chydenius’ pamphlet with one of his own, while the debate was otherwise primarily conducted in the newspapers. Moreover, Chydenius was also a farmer and – according to his own information – had twelve or thirteen farmhands and maids at his parsonage.⁸

One of his anonymous opponents amused himself in Dagligt Allehanda by turning the argument for contracts between two free parties against Chydenius in his position as vicar, and reflected on whether a parish should not contract for a cheaper, more pleasant priest if they were not satisfied with the one they had been provided.⁹ The signatory, “Sincere & Moderate”, who is assumed, on good grounds, to be the well-known national historian Anders Schönberg, tried to formulate an honest and balanced response in which he attributed very good intentions to Chydenius. He was, however, disappointed in Chydenius “painting so badly the decision of our county of Gävleborg, in section 48 of the County Council’s decision of 1777”, in other words the raffling off of hired servants among farmers that had been proposed there.¹⁰

After the law on hired servants had been taken up in the preceding Riksdag without result, a new initiative came in 1777 from a county assembly in Gävleborg. Anders Schönberg came from Gävleborg County, and had taken active part in the assembly.¹¹ Nor did the initiative succeed that time. After the matter was prepared at some time during the Riksdag of 1778–1779, the three upper estates voted against a reorganisation. The Estate of the Peasantry alone voted in favour. This vote has been explained by the fact that many of the farmers had more children than they could keep at work on their own lands, children who were therefore compelled to seek employment as farmhands elsewhere. The proposal for reform had received such a poor level of support in the Riksdag that the King chose to leave things as they were.¹²

The discussion in the general public remained at a high level for a couple of years. Seen as an issue belonging to agriculture, the hired servant question was also – as Pentti Virrankoski pointed out – a fairly late effect of earlier intense theorisation around agriculture by an economic interest that had manifested itself in publications and debate towards the end of the Age of Liberty, but had subsided after the Revolution of 1772.¹³ Even before Chydenius appeared in the summer of 1778, the position of hired servants had been taken up for discussion in Hushållnings Journal, in the December 1777 issue. The point of departure had been the opposite to that
of Chydenius: “The general corruption in our customs and a neglectful upbringing have sometimes brought forth the ordinary multitude: disobedient, undisciplined, unbelieving, lazy and conceited young hired hands of both sexes who gather, as it were, new strength from our shortage of people, and the wicked housekeeping we carry out with them.” The writer is particularly indignant about the decline of the ‘orlovssedel’, the fact that this testimony to how faithfully a servant had worked for his master had come, almost without exception, to mean a good character reference entirely independent of actual laziness or ability. In fact, this anonymous article may possibly have served as inspiration to Chydenius and his entirely contrary point of view.

One authoritative article appeared as late as May 1779 in the same Hushållnings Journal. Pehr Tham, who signed his letter with his own name, questioned the reasoning that freedom of contract was always to the advantage of those performing the service. It should, he argued, be as easy for the master to get rid of labour according to temporary need as it should be for hired servants to enter into service as they thought best. In such a free and equal world, those performing service would live in insecurity, dependent upon harvests and the unpredictable changes in prices. Tham, a Court steward and land owner, had led the discussion of this issue during an earlier Riksdag (1770). While he was demonstrating his authoritative expertise in Hushållnings Journal, he pointed out that Chydenius was poorly versed in the proceedings of previous Riksdags on the now once again topical matter.

There were echoes of the hired servant debate in the press as late as the end of 1779 and early 1780. Chydenius’ name appeared occasionally in the more fashionable and urbane Stockholms Posten. Anna Maria Malmstedt (soon to be Lenngren), who was one of the active members of the editorial staff, sketched numerous intimate pictures of Stockholm in the form of verse, and could thus allude to current subjects of conversation. For example, this is how it sounded when Chydenius was portrayed as a mutineer against order in Swedish society:

The coffee table has been set,
The time for gossip is near,
Now is the time for deliberation
On which direction the visit will go.
You can peel a few apples,
While Mother and Grandmamma talk
about the embarrassment of their household,
The wretched people they’re burdened with;
Hear that Chydenius should be charged
Because he seems to be staging mutiny.
The debate described above on the position of the servant population did not, consequently, come up against the limits of the provisions on freedom of the press. No one, as far as is known, was warned or rebuked by government authorities. Only certain landowners thought that Chydenius should keep quiet. The polemic was radical and potentially socially disruptive in its way by pitting classes against each other and through someone pleading the cause of an otherwise voiceless underclass. Or, as Pentti Virrankoski pointed out: “Chydenius also emphasises the fact that hired hands did not have a single representative when the estates were formed, as all members of the Riksdag were farmers.” Nonetheless, these were not the kind of issues surfacing when the Riksdag of 1766 debated the consequences of freedom of the press.

Calonius and the right of all to scrutinise court documents

In 1771, the first newspaper was published in the Finnish part of the country, with Turku at its centre. The press of Åbo Academy university was used for this new purpose. The previous year, some of the more progressive forces at the Academy had taken up meeting under regulated and social forms. They had formed the Aurora Society. It was modelled on the literary societies flourishing in Stockholm at that time with high, and not infrequently patriotic, goals.

Alongside courteous company, formal speeches and rituals, the Finnish academy town decided upon a periodical publication, Tidningar utgifne af et sällskap i Åbo (News-paper published by a society in Turku). The short form, Åbo Tidningar, would be the name used for these newspapers. They were published between 1771 and 1809 with a range of variations in name. They were published, however, through all the changeovers, by the academy’s professors, and when other forces failed, by Henrik Gabriel Porthan, the Academy factotum for as long as he lived.

These newspapers were filled with reviews of academic literature, publications of historical documents, and even recent weather observations. Initially, the Aurora Society’s own imitations of classical and French clas-
sical versification were a regular feature. Turku society newspapers consequently appeared free of the polemical tone that could be heard at the time in the Stockholm newspaper press. All the same, certain more radical Enlightenment tendencies were formulated in verse, perhaps chiefly by the two friends Johan Henric Kellgren and Abraham Niclas Clewberg. They were both still in Turku during the newspapers’ first years (later, in connection with his rapid career in Stockholm, Clewberg became known under his adopted aristocratic name Edelcrantz).

But in all other respects, Åbo Tidningar was not regarded as a forum for politics. This is evident from the fact that Anders Chydenius, who appeared as a quick-witted polemicist in several economic and political pamphlets, did not perceive the newspapers as his forum. A politicised Cap with a sharp pen, and with rugged democratic goals, would probably have been regarded as a strange bird in the more tempered climate of the Aurora Society. The rector from Karleby, known from his activities in the Riksdag, was elected to the society but he did not collaborate on the society’s newspapers as a writer. In his continued political authorship, Chydenius put his trust in Stockholm newspapers such as Dagligt Allehanda. At least in Chydenius’ case, politics belonged with the general political debate that had Stockholm as its centre.

There was one exception – and one that perhaps weighed very heavily. It concerned the first years of the Turku newspapers, when unlimited freedom of the press was still in force. A contribution of the greatest significance for the praxis of press freedom could then find its way into Åbo Tidningar. Under the pseudonym Misocryptus Phileleutherius (“liberal contemptuous of secretiveness”), Matthias Calonius argued for interpreting the 1766 Freedom of the Press Act in a way which guaranteed everyone the right to obtain documentation from court proceedings, regardless of whether or not they owned the means of disseminating them through print.

It was a matter of great topical interest to take up, from this perspective, the question of how freedom of the press and the Principle of Public Access to Official Documents were managed in the Kingdom five years after the Freedom of the Press Act was pushed through. The article was published in early 1771, the year before Gustav III made changes to the Swedish Constitution.

As Calonius argues, the intent of the law, with everyone’s right to obtain court minutes for print, could not have been that the printing itself was a condition for acquainting oneself with the document. An interpretation of this kind – which a number of citizens and several courts are reported to have expressed – would have limited those who had the opportunity
to access documents from court proceedings to a very small number of wealthy citizens.

The fact that the law was formulated so that the right to print the material was emphasised, Calonius argued, was a consequence of the publicity of court proceedings being discussed in a paragraph in the Freedom of the Press Act that had the right to print as its subject. Everyone should have the right to acquaint themselves with similar documents from the authorities, and in addition also have the right to have them printed. Acquainting yourself with a document is consequently the first step of that right, which also allows step two: printing. Stopping a step one cannot be regarded as unlawful. And a restriction of this would have limited this right to only a few people.

Or, as this article says:

If an applicant’s right to obtain access to a voting record were now restricted to the necessary conditions that he should have it printed, then a silence detrimental to the foundation and intent of the Act would be obtained in all cases where the party’s inability to pay for the cost, or their remoteness from the printer’s, would forbid the thought of printing. The right to see and know how civil servants handle the rights of subjects would then only be open to the richer section of the citizenry. The poor and the defenceless person would be shut out of this benefit, and neither he nor any other person who did not wish to advance the cost of printing would have the right to know whether his matter had been handled by the proper person.

Calonius, the university lecturer, refers to the Freedom of the Press Act and himself provides the following background, when by way of introduction he discusses “the old system of secrecy that has proven to be detrimental”:

And as that same system has been banished from Sweden for ever through the aforementioned Constitution, it has not been without concern that I have felt that a portion of our citizens – and likewise several courts – entertain the thought that if the right that each and every one of us possesses, according to the Act, to acquaint ourselves with a voting record should be bound up with the costly and troublesome condition that it should necessarily be sent to print, and that otherwise a record of that kind should not be published. I have been told that some courts have more than once been satisfied with the mere promise of printing, which the others have until now done without requiring that the party put down the price of the printing with the Court before study of the voting is granted to him; in fact, a lower judge has been called to defence for having given the voting of the court to a party that has not pledged to have it printed. If these steps are in accordance with the Freedom of the Press Act, that would be a matter in need of investigation.

Here, Calonius appears as one citizen among many, anonymous, with his social identity hidden by a signature. In this role, he turns to the general public. His article gives proof of a new language of the citizenry and of a non-hierarchical way of thinking; an observant citizen arouses and warns
other citizens in the face of a threatening danger or an injustice. There is no thought in the article that this is an affair that belongs to any particular instance in the civil hierarchy of the State, that an individual subject without a position in the hierarchy is forgetting his proper place. On the contrary, he understands his role so that every citizen should inform “the Nation” that its rights appear threatened.

In order to speak as a citizen, he therefore turns to the Aurora newspaper-publishing society (of which he was a de facto member):

Encouraged by your promise, Sir, to provide space in your newspapers for dissertations on important subjects, I have set my thoughts herein, and hope through your kind actions to have them placed before the eyes of the public. It is the right of the Nation about which the question is here; when it is seen to be suffering, it is right and proper that each and every citizen turn their attention to it.

Matthias Calonius was otherwise himself less well-off, and had to be granted special support in order to publish his doctoral thesis. He thus had experience of what it would mean to not be able to afford to print the documents that were required in order for someone to safeguard their interests. The fact that Calonius grew up in a vicarage did not mean that his curriculum of studies would be secure. More than most others studying at the Academy, he knew what it meant to be nearly destitute. Especially when the use of a printing press was an expensive enterprise that could place obstacles in the way of someone who lacked the necessary funds. He was forced to put his trust in being granted exceptions and temporary support in order to be able to print his thesis and battle his way through to his senior lectureship.21

That Calonius concerned himself in his 1771 article with an important aspect of freedom of the press is especially evident by the fact that there were a number of newspapers that made published court documents a significant part of their content.22 In his review of the different stages of freedom of the press during the Gustavian epoch, Elmar Nyman points out how the court
records published were a thorn in the side of the government authorities, that the court records that were publicised contributed in particular to the stricter printing regime that Gustav III introduced in 1785. Among the restrictions of freedom of the press later introduced during the reign of Gustav IV, there is a prohibition from 1804 against providing court documents with notes and annotations.

**Åbo Tidningar and the application of freedom of the press**

*Åbo Tidningar* underwent minor variations to its profile over the years. An interest in publication of historical documents together with observations from the natural sciences and statistics soon gained the upper hand, all characterised by Henrik Gabriel Porthan’s seriousness and zeal for patriotic subjects. Despite their relative inoffensiveness, the many name changes and irregular periodicity of *Åbo Tidningar* reflect the constantly-changing conditions for newspaper publishing in the Kingdom of Sweden. In a letter to Calonius – who had by then taken a seat at the Supreme Court in Stockholm – Porthan shows how the ever-narrower boundaries for what could be introduced into a newspaper dampened spirits in Turku. All the same, Porthan was anxious for voices from Turku to be heard throughout the entire Kingdom – and was obviously displeased when, sometime later, he noticed that this was not the case.

In 1785, the Turku society’s newspapers were affected by the reorganisation of press conditions, which meant that book printers – not authors or newspaper publishers – were made responsible for the contents of the columns. They had to discontinue publishing in May of that year. It took more than three years – until 1789 – before publication could be resumed. This was when J. C. Frenckell, Jr., as owner of the Academy’s press, applied for and was granted the privilege of newspaper publication. A book printer therefore now had to take charge and assume a responsibility that had previously rested with the Aurora Society. Moreover, the break in publication was something that *Åbo Tidningarna* shared with several other newspapers in the Kingdom at the time. Nonetheless, in Turku they stood up in defence of what remained of freedom of the press, also after the gradually stricter press conditions that followed the radicalisation of the French Revolution. Porthan showed grave concern when, in the autumn of 1793, his paper came close to being involved in a political prank where Carl Gustaf Leopold appeared to be the originator. Porthan was indignant that the entire existence of his newspaper could be put at risk by an incautious act in a contribution
that had been submitted. In Stockholm, Leopold had authored a parody of a pretentious piece congratulating Gustaf Adolf Reuterholm – at that time the true possessor of supreme power and the unpredictable castigator of freedom of the press – and then with a somewhat less open approach, let his parody fall into the hands of the unknown newspaper editorial staff in Turku:

Peculiar that Leopold could commit such a coarsely boyish act! Peculiar not to consider that through such indecent abuse of freedom of the press, we will be robbed of the last remnants thereof! Because it cannot be supposed that those involved would have the strength to ignore such things. I can never be surprised enough about the sanctity with which freedom of the press is held in Denmark!27

Porthan further states in the letter that “Leopold should be exiled – first to Pomerania and then, out of mercy, to Linköping […]”. Leopold had indeed taken up residence in Linköping a few months earlier with a view to translating authors of antiquity, however with a leave of absence and his wages maintained. Beforehand, he had seen to it that he was on a good footing with Reuterholm. The move was preceded by a meeting where the contracting parties seem to have immediately found each other and expressed mutual appreciation, and Leopold held out the prospect of a poem on His Excellency Reuterholm’s merits (the first two sections of a long poem were composed two years later).28

Porthan aired his indignation a couple of times more in letters to Calonius, at the same time as he seems to have learned a very important lesson as the editor, conscious of his responsibilities, that he was: “As we did not know the verses that were parodied, it could well have happened that we introduced them, if other considerations had not prevented it. This example teaches me how prudent an editor of a paper like this has to be!”29 The freedom of the press that still existed was valuable, and had to be handled prudently – not like Leopold, in a boyish parody of congratulations of the holder of supreme power.

When control over the press was further increased five years later by a 1798 press ordinance, with Gustav IV at the helm of state, the men in Turku had difficulty understanding what would then apply. The 1798 press ordinance gave Porthan cause for new annoyances to communicate to Calonius. He was especially irritated about the fact that the formulations were so imprecise that they left an editor in despair:

The worst thing is that we are in no position to comprehend what the legislators require and prescribe. Owing to this, Åbo Tidningen must once again be discontinued, even though Frenckell has the licence for it; the subjects the newspaper is allowed to touch upon are determined in it (already a beautiful thing, as not once have the editors been consulted, but pro imperio been told: On these subjects and no others shall you write
and think!) and it says in the new proclamation that the holder of the licence shall not only report to the Civil Service Collegium the subjects that he (the printer!) is inclined to introduce (that is, he is to remind the CSC about what was dictated to him!) but also to use what the CSC has prescribed as a meticulous guide. [...] Such a great noise is had in regard to our so-called ‘freedom of the press’, an uneasy adjustment and wavering to and fro, with something that could at one time usually be explained now inadmissible. [...] But who dares explain such a dark, confused regulation? So one has to stop, and ask oneself first.  

These excerpts perhaps provide a rough picture of how the gradual changes to what was forbidden and what was permitted were received outside the capital, and of the attitudes towards them. In his communications with his Åbo Akademi university brother Calonius (who was at the time located closer to the centre of power in Stockholm), Porthan tried to ascertain what applied at that moment, and simultaneously to give voice to the region’s sense of hopelessness. In the letter above he emphasises that if the hard-to-interpret decree on centralised preventive control that had then come out were to be understood in a stricter sense, then it would have been just as well to “entirely ban all newspapers and papers in the provinces”. But after an interruption to publication – this time for only two weeks – Åbo Tidningar continued, obviously sufficiently assured that publishing newspapers in the “province” was still possible. 

And as Porthan declared in his newspaper: “[...] [I]t has managed to become a need in us so that the people looked upon this stoppage with dissatisfaction”.  

A solitary critic during the Iron Years

In light of the facts referenced above, it is remarkable, indeed, that the publication of a literary paper, with an ambitious, critical objective and frequent publication was initiated late in 1802. This was when one voice in the press after another had been silenced as a consequence of the extremely limited room to manoeuvre that the press had at the time. Turku had now become the only place in the Kingdom of Sweden that conveyed criticism of newly-published literature at this level. And again, Porthan seems to have been the prime mover. He died in 1804, and was thus public-
ly active up to the end. Several others, however, joined him in this project. In particular, he had a highly-qualified collaborator in Jacob Tengström.

*Allmän Litteratur-Tidning* (General Literary Newspaper) was published through the year 1803. It was remarkable primarily for having appeared at a time marked by confiscations and the silencing of critical voices in the press. The newspaper, which came out twice a week, managed a total of 104 issues during its year of publication. It was the only real literary paper in the Kingdom of Sweden after G. A. Silverstolpe’s *Journal för Svensk litteratur* (Journal of Swedish Literature) had been confiscated. The new paper was said to be “Published by a society” – that is, Porthan and Tengström – that had the support of a good part of the professorial staff at Åbo Academi university. There were also collaborators from the Swedish side. The book-store of Isaac Utter in Stockholm was advertised as the distributor in the capital. In contrast to Silverstolpe’s publication, *Allmän Litteratur-Tidning* appeared to have a primarily conservative outlook: it was against the new subjectivism, against Kantianism, and – as it was called – the literature of the novel and of poor translations. At this point, at any rate, Porthan at least was a confirmed opponent of Kant and his followers. But the fact that Tengström, who *de facto* played a prominent role in the literary newspaper, was not unfamiliar with the theological neologism broadens this Turku paper’s spectrum of opinions. As a result of its critical attitude towards Kantian philosophy, however, *Allmän Littera-
tur-Tidning appears most closely as an heir to Läsning i Blandade Ämnen (Reading in Diverse Subjects), which had been shut down a year and a half earlier. In fact the publisher of Läsning, Georg Adlersparre, had wanted to get a contribution from Porthan for his newspaper, but at that time had asked about “economic observations about Finland”.\(^{34}\) The Turku university librarian and professor obviously had sufficient to do, or entirely too much, with his own publications. And within a short time he was busy with his own literary newspaper. This alongside Åbo Tidning, the publication of which continued as previously.

Allmän Litteratur-Tidning promised brief reviews of newly-published books, particularly the learned works of the fatherland; economic and natural scientific literature had a prominent place in its columns. The level, in general, is scholarly: interest in and a certain familiarity with pathology and the Arabic language, for example, are advantageous when making use of and enjoying the contents. Remarkably enough, this literary paper did not shy away from throwing light upon the French conditions in some detail – something the gradually-stricter curtailments of freedom of the press warned against. Jacob Tengström kept himself well to the fore here.

In Sweden, vigilance toward France culminated towards the end of 1804 when imports of printed works of all kinds from France were forbidden after an article in the French government newspaper Le Moniteur painted Sweden under Gustav IV– then one of the Napoleonic Empire’s most assiduous enemies – in dark colours. Allmän Litteratur-Tidning in Turku was discontinued at the end of 1803, shortly before the stricter prohibition against all types of French literature entered into force. But the radicalisation of the French Revolution had already been quickly followed by a number of restrictions on the French subjects that were allowed to be touched upon in the Swedish press.\(^{35}\)

Even though Turku’s literary newspaper had not immediately devoted itself to French politics, Tengström’s rather detailed and informed treatment – and every now and then positive assessments – of French matters and conditions had not been regarded positively in Stockholm, where the Swedish Government was anxiously trying to sever all connections with France. However, the definitive blocking of France came barely a year after Allmän Litteratur-Tidning had been forced to close.

The subjects Tengström dealt with could have headlines such as “On Educational Activities in France” (Nos. 10, 11, 17); “On the Institute de France” (Nos. 15, 40); “On Kantian Philosophy in France” (No. 17); “On the State and Practice of Religion in France” (Nos. 31, 32, 34); and “Paris” (war armaments, special schools; No. 93).\(^{36}\) Neither he nor any other collaborator at Allmän Litteratur-Tidning took a similar interest in any other nation.
This is how Tengström – as noted, writing anonymously – could begin one of his longer reviews:

But from this terrible twilight, which has already threatened to heap dark night upon one of Europe’s most enlightened peoples, a reddening dawn of light and hope has quickly emerged that seems to portend to the scientists in France not only ancient, but possibly even new and increased, advantages.  

If French conditions were a sensitive subject, theology was also a very risky area to express an opinion about in print, even in the form of literary reviews. Gustav IV was personally keen on nothing unsuitable being allowed that could be regarded as questioning existing Lutheran doctrine.

In his history of how Swedish censorship was carried out before the 1810 Freedom of the Press Act, Elmar Nyman describes the provisions concerning the supervision of theological authorship that Gustav IV had initiated. He notes that theological censorship in October 1799 had been extended to cover reviews of works that related to “our codes of Christendom”, and that this provision also applied to reviews of printed works that had already undergone censorship and been given permission to print. It was thus the activities of theological review that would also be censored. Nyman further notes in this context that two months later, the Swedish Government had aimed “a direct declaration of war against neologism and Kantianism” through a circular letter to the Cathedral Chapter of the Kingdom, which was then encouraged “[...] to carefully monitor that the priests preached the word of God and the teachings of Christ in their purity.”

In any case, Allmän Litteratur-Tidning was not very careful on this point, inserting a number of reviews of this kind. Theological literature was de facto a highly-favoured subject in the paper. The reviews were marked by the neological attitude that Tengström represented, though with a certain caution. He could, however, write anonymously in the literary newspaper. As Gustav Björkstrand has argued, Tengström’s positions were radicalised when he was permitted to appear anonymously. While he was careful, as a priest in a parish community, not to sow confusion or doubt, he took greater freedoms among his students. And as a writer of articles, he represented a clear neological attitude and demanded thorough improvements to the teachings and praxis of the Church.

Despite this, it is clearly evident that Allmän Litteratur-Tidning underwent regular theological censorship locally in Turku. A clearly visible “Imprimatur. Ad mandatum. Nicol. M. Tolpo. Fac. Th. Ab. Not.” was stamped above reviews of this kind, by which Nils Magnus Tolpo, on behalf of the theological department at Åbo Akademi university, guaranteed that the content did not violate the religious truths embraced by the Church of Sweden.
Presumably, theological censorship in Turku was still not sufficiently diligent. It is above all a critical assessment of the arguments of the conservative Bishop of Visby, Johan Möller, in his own *Läsning i blandade Religionsämnen* (Reading in Diverse Religious Subjects) that has been pointed out as the most compromising article the literary newspaper published, and thus the most powerful reason the newspaper was discontinued. Tengström dealt with it in two lengthy reviews. Möller appears to have noted the criticism in Turku and, in turn, expressed his displeasure over it.

According to what was stated, high postage rates stopped publication. Distribution had been made so expensive that it was impossible for the enterprise to pay its way. Wilhelm Lagus, who is the only person to have devoted detailed attention to *Allmän Litteratur-Tidning*, points out the stinginess of the Post Office as just one cause, “moreover an expression of the disfavour within which Gustav IV took Tengström’s review of Bishop Möller’s *Läsning i blandade religionsämnen*.42
Russian rule, Swedish press freedom laws

As a result of the war of 1808–1809, Finland was annexed as part of the great Russian Empire. There is very little to read about the events of the war in the newspapers of the time. Nor was there particularly much written about Finland in the Swedish press after the split became a reality. It is difficult to detect any more clearly-articulated revanschism. One exception that does draw the attention, however, is provided by Adolf Regné and his Allmän Politisk Journal, which in 1811 took up the idea of Finland’s reunion with Sweden. This resulted in the editor being imprisoned in a fortress for eleven months. As is known, the ‘politics of 1812’ involved a rapprochement between the national leadership of Sweden and Russia, and a mutual understanding about accepting the status quo after 1809.

Tsar Alexander originally wished to award Finland with the status of a state and to arrange conditions well enough that the country’s inhabitants would not regard themselves as being subjugated but, on the contrary, would feel that belonging to the Russian Empire was an advantage. This is according to how Alexander – and with a liberality that still characterised a number of his standpoints during the Napoleon years – is said to have described the matter to Fabian Steinheil, the Governor-General of Finland, in a secret communication in September 1810. Signs of appreciation and a new confidence in the future were also heard from several quarters in Finland, also less loyally formulated than what would later be the rule.

In any case, in 1809 Sweden had freedom of the press written into its Instrument of Government, and in 1810 it had a Freedom of the Press Act, while a separate Finland would continue with the old laws the Grand Duchy inherited after having been a part of the Kingdom of Sweden – that is, the Gustavian laws with all their restrictions on freedom of the press up to 1809. While an update of the political language soon occurred in the new Sweden which was taking shape in 1809 – the civic vocabulary of the revolutionary years, so to speak, came into more general use – it took time before any similar development could be detected in Finland. Nevertheless, general opinion gradually generated its advocates in Finland, above all in Adolf Ivar Arwidsson. But since no parliament would be called for over fifty years, a life of the state equivalent to that of Sweden could never arise.

Over time, one dilemma became increasingly urgent: what was the actual purpose of general political opinion – to enlighten the Tsar’s bureaucrats? This would not be expressed aloud during the first decades of the Grand Duchy and Russian supremacy, but would be formulated clearly enough later, when Johan Vilhelm Snellman began presenting proposals for political reform in his newspaper Saima in the 1840s.
In any case, there were different phases in its development: in the 1810s, the leadership of the Russian empire expressed a number of more liberal standpoints; in Turku, the Finnish Economic Society (founded in 1797) was briefly given a number of functions in society that perhaps to some extent covered up the lack of a sitting parliament. With the 1820s – and in particular with Nicholas I on the throne – a more reactionary political outlook, that paid little heed to public opinion started to emerge.

In the 1810s, few periodical publications made their way into the Finnish public sphere. It was only towards the end of the decade that new developments could be felt. Åbo Tidning was succeeded as the only newspaper after the shift in power, with the new year of 1810, by Åbo Allmänna Tidning, now the official newspaper. Much of the content was still the same – there was no lack of poetry, notices of thesis defences, or historical and geographical observations – while some things were new, such as imperial manifestos with explanations and gracious letters. News and dispatches particular to Finland were more or less new. Foreign news was also included; nor were Swedish conditions forgotten.

Another publication – the outwardly scarcely remarkable literary calendar Aura – became the first to articulate some form of intellectual opinion. At the same time, it was an early expression of what is known as “Åbo Romanticism”, and as such a sign that new currents of thought had taken root in the university town. Among the student generation that began to make itself heard, Adolf Ivar Arwidsson was a leading figure. At that time, he was busy collecting popular poetry in Swedish in Finland, and was writing poetry himself in a Romantic, or Geatish style, if one likes to make a comparison with Sweden. Arwidsson was marked in his expressions and his thinking by his stay in the academic town of Uppsala, a longer sojourn just at the time Aura was being planned. For some time to come he also kept in contact with his literary friends in Sweden, particularly Lorenzo Hammarksköld. The latter served as Arwidsson’s model as regards mystifying his own appearance among the reading public with the help of a number of pseudonyms – even debating with himself under different pseudonyms.

Arwidsson was one of the writers who appeared in Aura. Here, he acted as a grandiose poet, striking an old Geatish succession of notes. It was Johan Gabriel Linsén who greeted the readers in a preface in the first num-
ber of the calendar for 1817. Although there would be no more than two calendars, mostly filled with versified contributions, it soon became clear that Aura had set something new in motion. And over time, Linsén would become a hardened editor, involved in subsequent journalistic enterprises in Turku. It was, however, a longer article by another hand that would weigh heaviest among all the diverse cargo that appeared in Aura. “On Some Obstacles to Finland’s Literature and Culture”, by Johan Jakob Tengström, stakes out a kind of programme for cultural aspirations in Finland, especially the task of looking for their own historical identity, and devoting themselves with new seriousness to Finnish, the country’s vernacular.46 The younger Tengström, a philosophising lecturer in literature and nephew to the aforementioned Jacob Tengström, expressed himself with a certain solemn caution. He does not take a completely bright view of the situation, but does, indeed, identify a large number of obstacles. In general, Tengström’s student generation was characterised by German structure, long sentences and detailed arguments. The French piquancy, the quick observation that hit the mark, was cultivated less and less during that period. And this new, sometimes somewhat formless, reasoning served very well for wrapping up and almost hiding what could be perceived as critical declarations by the monitoring authorities.

The temperature rose, however, as time went by. A successor periodical, Mnemosyne (1819–1823) was somewhat more unusual: a spirited, debating literary paper that was frequently published, a literary paper in which hard swings were shared and little quarter given by young academy adjuncts in their many discussions. The participants in these debates were equally captivated by horror and enthusiasm over their polemical behaviour, over thinking aloud and appearing in public in this manner. But Mnemosyne was no political paper, above all it was literary – even though the sensitive issue of the status of the Russian language in Finland appeared in its columns.47

Arwidsson and the years of tension in Turku

Adolf Ivar Arwidsson, one of the leading contributors to Mnemosyne, still felt the need to take a step out into the field of politics, and in his own Åbo Morgonblad (1821) gave the prevailing freedom of the press a broad interpretation, relying on the Tsar’s liberalism. It was, perhaps, partly a well-considered stratagem on the part of the editor, but perhaps also an honest belief in the Tsar’s attitude that Arwidsson maintained after happening to have exchanged a few words with Alexander I in connection with the latter’s visit to Turku in 1812.48
From the start, Arwidsson set to work in *Morgonblad* investigating the concepts of “general public” and “general opinion”. It was a matter of the reading public in Finland waking up and setting about taking part in a general exchange of opinions in the public domain. For any doubters, the editor drew up the rules for debate and appearance in public by publishing the ordinances on press freedom in force in Finland – that is, the inheritance from the joint Gustavian era. By doing this he wanted to repudiate, as he pointed out, a general prejudice that freedom of expression was extremely curtailed in Finland. In a manner typical of the Romantic currents of thought at the time, Arwidsson interpreted opinion as an organism in movement: general opinion is depicted as an aggregate intellectual force that breaks down laws and forms of government that put up barriers – that is, if these inherently static forms do not adopt to the spirit of the times, itself constantly developing (here, Arwidsson expresses similar arguments to those presented by A.G. Silverstolpe not long before). Publicly-articulated opinion is thus painted as a powerful, potentially dangerous, force “one that seeks only an opportune moment to break out violently and destructively” that it was futile to try to restrain if one wished to avoid violent change.

Everything and everyone (“all actions in the State” included) must be held accountable by the general public, asserts Arwidsson, and threatens with the “general court of opinion” for such things that opinion finds hazardous but which do not directly break established law. The editor puts forward his radical viewpoints in a language rich in metaphors and allegories. Sometimes, it is not entirely easy to make out what he is actually referring to. By swinging high into the thin air of abstractions and parables in this way, Arwidsson presumably avoided getting into immediate conflicts with the more practical and conventional-thinking government bureaucrats, which would be disastrous for his newspaper. But at some point government authorities reacted, as it seemed clear to both high and low that Arwidsson had gone too far. *Åbo Morgonblad* managed to survive barely half a year before it was confiscated. The power to confiscate was, of course, written *de facto* into the regulations on freedom of the press that Finland had inherited from the Gustavian epoch.

The confiscation of *Åbo Morgonblad* in the autumn of 1821 was followed by a number of student protests. The following also took place: in December 1821, a student with a rapier tried to stab Professor of Medicine Israel Hwasser, who was known for his admiration of the Tsarist reorganisation. The attack may also be seen as inspired by the spring 1819 murder by German student Karl Sand of the “traitor” August von Kotzebue, a then-popular dramatist who was said to be serving as Alexander I’s rapporteur from Germany. And furthermore, at the end of term in the spring of 1822, Ar-
Arwidsson was expelled for good from the university by means of an Imperial Edict. The following year, he moved to Sweden. It was a provocative contribution in *Mnemosyne* that put a definite end to Arwidsson’s career as a journalist in Finland.\(^{52}\)

The previous year, a new supervisory office had been introduced at the university – a Vice Chancellor’s post – tasked with subduing the student unrest that had made itself felt in Turku. The office’s first holder Count Frederic Johan Aminoff, together with State Secretary Robert Henrik Rehbinder, had demanded Arwidsson’s dismissal. In May 1822, the Swedish Professor of General and Domestic Law Anders Erik Afzelius was also dismissed, after first having been summoned to contribute to the legal transformation of the university and of Finnish society. His departure was followed by that of professor Johan Bonsdorff, known for his liberal standpoint.\(^ {53}\)

From a little greater distance, the incidents related above still appear to be exceptions if the period is to be characterised as a whole. Despite the sometimes quite serious skirmishes in Turku, the tranquillity in the rest of the country could be said to have been characterised by some form of poor vicarage romanticism, or perhaps some form of “Biedermeier” harmony in the non-urban society that Finland in its entirety still was up until the 1830s. Or this is how a poet, Johan Ludvig Runeberg – in a stoic spirit and perhaps with forced idealism – could paint a portrait of a time of contentedness and simplicity, meagre for the majority of the population but (at least in a poeticised version) truly heroic.

In his own way, he struck a note for, and laid the foundation of, nation-building that would continue for the rest of the century.

But there was another matter with great potential that slowly picked up speed: newspapers written in Finnish. Caution in choice of subject, paired with an ambition for popular enlightenment was evident at the outset. There would be no debate, and the form of address to the readers was not infrequently that of the schoolmaster; a teacher who went carefully about enlightening – as was somewhat patronisingly assumed – his inexperienced reading audience. Loyalty and respect for the authorities was a given, as was firm respect for prevailing religious truths.\(^ {54}\) A more urban and civic Finnish press was long overdue – at the same time as student youth in several primarily Swedish-speaking bourgeois circles enthusiastically acquainted themselves with the Finnish language.

Enthusiasm for their own national and popular characteristics, for the character of the Finns and for folk poetry also made some student generations less involved in constitutional questions and issues concerning freedom in order to, all the more zealously, devote their strengths to Romantic democratic matters (only in the latter half of the nineteenth century would
The status of the Finnish language become a clear issue of justice, and take its place on the political agenda.

As far back as 1776, the vicar Anders Lizelius had made an initial attempt in Turku with *Suomenkieliset Tietosanomat* (Finnish Informational Messages), a Finnish-language newspaper that contained both domestic and foreign news. This elegant initiative was not particularly long-lived, however. This paper had no real successor until Reinhold von Becker began publishing *Turun Wiiko-Sanomat* (Turun Weekly Messages) in Turku in 1820. At the outset, it was an ambitious, inventive paper that had especially great significance for the further development of written Finnish.

In the north, *Oulun Wiikko-Sanomat* (Oulu Weekly Messages), published in Oulu in 1829, was a pioneer, while *Sanan Saattaja Wipurista* (Vyborg Messenger) began publication in Viipuri in 1833 (the second newspaper to be published outside Turku was *de facto* the German *Wiburgs Mancherly*, which came out in 1821).

The first topical debating organ of opinion in the Finnish language was the daily newspaper *Suometar*. It began to be published in Helsinki in 1847, by August Ahlqvist and Paavo Tikkanen. It gradually gained followers, and Finland then had a situation in which the debate in the press was conducted in two languages: a debate where people listened to and responded to each other across linguistic boundaries.

The developments here have been followed somewhat further than the subject of this article presumed. Despite a few words on what followed later, the intent has nevertheless been to briefly follow developments up to the new conditions of the 1830s and the censorship ordinance that would regulate what could be expressed in newspapers and literature.

**The Censorship Ordinance of 1829 and Year Zero of Finnish journalism**

In 1829, the Grand Duchy of Finland had its press conditions regulated in a Censorship Ordinance decree; preventive censorship and the power of confiscation were secured. The tranquillity that prevailed in the Finnish public sphere with the arrival of the 1830s justifies the marking in of a kind
of Year Zero for Finnish press history. Newspapers were few, insignificant in scope and publication frequency, and they cautiously made little fuss. At least at the outset. On the other hand, the split from Sweden in 1809 – as outlined above – was still followed by a great deal of activity; connections with the Swedish public sphere had in no way been broken immediately. What later influenced conditions to a very great extent was the Great Fire of Turku in 1827 and moving the university to Helsinki, where central administrative bodies had already been established. The traditions of Turku and its literary men – closeness with Sweden – were then quite effectively broken, which was also the intent of the highest levels of government.

Before the Censorship Ordinance, the press had had its wings clipped in the early 1820s through confiscations and restrictions on news material. From that point on, subscriptions to Swedish newspapers were prevented through monitoring by the Post Office. These were, however, more or less improvisations – immediate reactions on the part of the executive power to situations that arose. But now, press conditions would be regulated with more care.

_Hans Kejserliga Maj:ts Nådiga Förordning angående Censuren och Bokhandeln Storfurstendömet Finland_ (His Imperial Majesty’s Gracious Ordinance Regarding Censorship and the Book Trade in the Grand Duchy of Finland) was ratified in St. Petersburg in October 1829. Some particulars of this ordinance is familiar from a few of the provisions on freedom of the press that were in force in Sweden until 1809. The crucial difference is that this was an ordinance on how preventive censorship regarding all printed material was to be organised. Everything would be reviewed before anything was allowed to go to print.

Naturally, the Censorship Ordinance should also be viewed against a Russian background. After the Decembrist Uprising, Russia enacted a strict censorship decree in 1826, which was then followed by a slightly milder version in 1828. Thus, the 1829 Censorship Ordinance for Finland was designed after the Russian model. This ordinance would form the basis for monitoring of all printed material until Finland adopted a Freedom of the Press Act in 1865 (this freedom only existed for two years).

According to the letter of the Censorship Ordinance, a censorship board was established in 1829, with the Vice-Chancellor of the university as chair. Its working body was composed of a censorship committee and a censor in every town with a printing works. The postal system was given a role as monitor of newspaper press imported from abroad.

The system was thus hierarchically constructed, with a board monitoring the lower censorship institutions and the instances that were assigned particular roles: the cathedral chapter, the university, and the Collegium
Medicum. Even the spoken word on theatre stages was placed under censorship. The law enforcement authorities had to take charge here for lack of any other form of responsible body for drama; in the provinces it was the police, in Helsinki it was the procurator. When a play was printed, it would undergo normal book censorship.

Here are some sections from important paragraphs of the ordinance:

§ 3. The products of literature, of the sciences, and of the arts are subject to prohibition by the Censor: 1) when they contain theses, opinions, or anything that is contrary to the truth of the pure Evangelical doctrine and the profession of the true faith [...] and lead to atheism, materialism, contempt for the Holy Scripture [...] 2) When they contain anything that insults the sanctity of His Holy Majesty [...] 3) [...] the requirements of decency are ignored [...] 4) the honour and civic standing of any person [...]

§ 4. [...] the Censor should call particular attention to the spirit of the book being reviewed, as well as to the author’s apparent purpose and intent [...]

§ 6. In the review of historical and political publications, the Censor protects the sanctity of the Highest Power through carefully ensuring that nothing insulting to the Government of the country, or governments that are on friendly terms with Russia, is permitted.

§ 11. Novels, stories, and other literary products of the same kind should, in view of the morality of their contents, be reviewed with more rigour than other books.

In several parts, the design of the paragraphs tallies somewhat with well-known Gustavian conditions and provisions – but now all printed matter would be submitted to pre-censorship. Each area of speciality would be reviewed by authorised experts: books with spiritual contents and statements of doctrine of the Christian faith would be approved by the cathedral chapter in the diocese where the book was to be printed; the university would censor all documents, speeches, programmes and other publications published in its name; and medical works of every type by the Collegium Medicum.

The Senate – the highest executive power with its headquarters in the Grand Duchy – was entrusted with the task of granting publication permits for new newspapers after first having consulted with the National Censorship Board on the individual case. The Senate would also, “should reason arise”, decide on confiscation of newspapers. A publication permit did not require the stated name of the author or the publisher, but the publisher must – according to the ordinance – be known to the printer.

The ordinance opened the way for a good deal of arbitrariness and variation depending on the individual censors, on their individual zeal, and on which policy they perceived as being in force. The censor was to recommend to cut or re-write prohibited passages of text, or he could also ban
The statue of Henrik Gabriel Porthan was erected in 1864, and is located in central Turku. Sculpture by Carl Eneas Sjöstrand. The Finnish National Board of Antiquities. Photo: P. O. Welin.
an entire article. As regards newspapers, the ordinance gave the censor twenty-four hours for his examination.\textsuperscript{59}

In 1831, over a thousand copies of newspapers coming from Sweden were confiscated; over the coming years, eleven Swedish newspapers (including \textit{Aftonbladet}) were banned completely. There is reason to keep in mind that 1830 and 1831 were the years of the Polish uprising against Russian supremacy – or the revolt, as seen from the Russian side. The Censorship Ordinance strengthened and emphasised the bureaucratic monitoring that would now be in force – typical of the period, with Nicholas I on the imperial throne as a guarantor of the post-Napoleonic repressive system that was now the rule in large parts of Europe, especially Central Europe. Or as Päiviö Tommila points out in his history of the Finnish press: censorship conditions in Finland were not particularly severe if seen from a general European perspective. England and Sweden, with their freedom of the press, constituted the exceptions.\textsuperscript{60}

Over time, executive power in Finland in the form of the Governor-General and the local governors would come to influence how the Censorship Ordinance was applied in practice. Only in the 1840s would more acute conflicts arise between censor and editor; the extent to which the executive power could intervene and give the censors instructions then became obvious. Almost exclusively, it was a matter of intensifying vigilance. Cuts to passages of text and confiscations of entire issues of a newspaper became more and more common until the right to be published – the licence, as it was still called – was completely withdrawn. This was the case with Johan Vilhelm Snellman’s \textit{Saima}, which after three years, and with a severity that was new for the period, had criticized the actions of the authorities and published various proposals for reform. It was forced to close in 1846.\textsuperscript{61}

Note, however, that contact with Sweden in the 1840s was not completely broken. Editor Snellman had sharpened his pen and trained in polemics, so to speak, for a couple of years in Stockholm where he collaborated on \textit{Freja} until, repatriated to Finland, he began publishing his own paper in Kuopio.
Notes


2 The sentence: “I disapprove of what you say, but I will defend to the death your right to say it” was attributed to Voltaire long after his death. But, as has been verified several times, he actually never expressed himself in precisely that manner. He did, however, speak along these lines, so that the spirit attached to the sentence can still, with some reason, be associated with Voltaire.

3 The edition of *The Collected Works of Anders Chydenius* lists twenty-five contributions for 1778–1779 without including texts in connection with the hired servant question shortly before or after this period, or contributions that could have been considered as alluding to the debate (more on this below). See “Schema över inlägen i tjänstehjonsfrågan”, Chydenius 2015, pp. 765–766.

4 Cf. Pentti Virrankoski: “The publication by Lanthandeln [Svar på Vetenskaps och Vitterhets Samhällets i Götheborg fråga: huruvida lanthandeln... Printed competition document 1777, in Chydenius 2015, pp. 51–80] probably encouraged Anders Chydenius considerably: the publisher dared to print the document and there were no reprimands afterwards, either. Gustav III’s subjects thus appeared to have the right to openly put forward their opinions on society and at the same time appeal to public opinion even if their views contained daring criticism of the prevailing conditions.” Virrankoski 1985, p. 297.


6 Bo Lindberg in Chydenius 2015, pp. 270, 273, 277. Volume 3 of *Anders Chydenius samlade skrifter* also contains a number of contributions by other contemporary authors who criticise Chydenius’ standpoint.

7 Regarding the natural law perspective in Chydenius, see also Patoluoto & Sarje (1975), pp. 67–97. Chydenius’ having understood the matter from a higher perspective than as regards only the hired servant ordinance is evident from the title of the longer manuscript (preserved only in a fragment) that constituted the original of the manuscript: “Undersökning, Om det är öfverenstämmande med en Borgerlig frihet, Rikets Grundlag, och Dess Sanskylliga Nytta, at tvinga obrottsliga arbetare til Års-Tienst, at fastställa deras Löner, och att fördela Tienste Folck efter Lott Husbönder emellan, anstäld af Anders Chydenius, Kyrkoherde i Gamle Karleby.” (Investigation into whether it is in conformity with civil freedom, the Fundamental Laws of the Kingdom, and its real benefit to compel innocent workers to a year’s work, to fix their wages, and to allocate servants among masters by lottery; by Anders Chydenius, Vicar of Gamle Karleby). Chydenius 2015, p. 112.

8 Lindberg in Chydenius 2015, p. 274.

9 “[...] with the condition that if the price in our opinion is too high, or another vicar in our opinion preaches better, we may then in accordance with our natural right go to the nearest vicar who presents a better purchase; or if he is too expensive, or does not preach to suit us, we may have the power to demand ordination of a young, clever person to perform all these important duties for us against the contract we can sign with him, as much as we like and are able?” [unsigned] “Kyrkoherden herr magister Kydenius, har nyligen...” *Dagligt Allehanda*, 30 December 1778. Chydenius 2015, p. 555.


11 Virrankoski 1985, p. 298.
Public access to official documents and freedom of the press

12 Gustav III, who himself was prepared to regard the matter as a purely economic issue, could have pushed through a change supported by only one of the estates of the Riksdag. Virrankoski 1985, p. 305.


16 "If the hired servant avoids being hired for a year, so does the master avoid hiring for a year. If the hired servant often soon quits with his master, so is the master often soon quits with his hired servant. […] I therefore do not understand why Rector Chydenius asserts that his proposal would be particularly advantageous only for the hired servant.” Hushållnings Journal, May 1779.

17 “Anvisning för unga sysslolösa Fruntimmer” (Instructions for young idle women). Stockholms Posten No. 222, 1779. In Stockholms Posten No. 9, 13 January 1780, the Christmas season was concluded with such things as the following: “Everyone wonders if not everything that has been written against Chydenius can with good reason be regarded as nonsense.” Schauman 1908, pp. 330–331. Cf Sverker Ek, who ascribes this thought to Kellgren. Ek 1965, p. 214.

18 Virrankoski 1985, p. 303.


20 Tidningar Utgifne af et Sällskap i Åbo Nos. 3–4, 14 and 28 February 1771. The headline has the addendum: “The following has been submitted”, with a postscript in a note: “It is being included upon request, as the question is important and various ideas are held about it. We hope that the Author himself finds that what we left out has been passed over with good reason.” The article was first stated to be jointly by Calonius and Porthan, but the double attribution was soon corrected. It was also included as a text by Calonius in his writings: “Om Rättighet att utbekomma Omröstnings Protocoller vid Domstolar” (On the Right to Receive Minutes of Voting in Courts). Matthiae Calonii Opera Omnia vol. 3 (1833), pp. 93–102. Cf Wrede 1917, p. 37.


22 Cf several papers that published court minutes: Wecko-Tidningar. Som omfatta Rättegångs-ärender, Satyriska målningar, Samt Moraliska och Juridiska Tänkar, 1770; Svenska Upsynings-Mannen, 1772; Sanning och Rättvisa 1773; and Johan Pfeiffer’s license application regarding Dagligt Allenhanda and K. M:ts nådiga kungörelse och påbud, angående boktryckarens ansvarig 6 May 1785, in Lundstedt 1895 p. 62, where printing of court minutes in particular is stated.

23 Gustav III decided to “put an end to all these papers, which in reality are nothing more than libellous pamphlets”. Nyman continues: “The King seems from the outset to have hesitated on the method by which this would take place. What made him formulate definite plans was the writing in Den Svenske Lycurgus. This newspaper had been started in January 1785, and its publisher had used a completely new tactic. Through publishing trial documents and appointments whose legality was debatable, but without his own comments, the newspaper called attention to the prevailing unsatisfactory state of affairs.” Nyman 1963, pp. 39–40.

24 Prohibition on supplying court proceedings with notes and remarks upon their publication, 24 August 1804. Nyman 1963, p. 25.
25 See Knif 1985b, pp. 94–95.
26 Lundstedt 1895, p. 76; Nyman 1963, p. 41.
27 When he wrote to Calonius on 3 October 1793, Porthan believed he knew that the original congratulations had been written by a Major Ehrenmalm. Porthan 1886, p. 19. In Turku, Porthan was not quite clear about what had taken place in Stockholm (he was possibly toying with the idea of Thorild’s nearly simultaneous verdict of exile – L. M. Philipson, a Thorild epigone active as a journalist, had tried to hint that the former court poet had met the same fate).
31 H. G. Porthan to Matthias Calonius, 10 May 1798. Porthan 1886, p. 484.
32 The other most frequent collaborators were professor of chemistry Johan Gadolin and adjunct professor of medicine J. F. Wallenius.
33 Cf. Knif 1999b, p. 182.
34 Anér 1948, p. 16 (note 19) and p. 56 (in particular note 68).
35 Nyman 1963, pp. 23–26 and 119–121.
37 “Om undervisningsverken i Frankrike” (On Educational Activities in France). Allmän Litteratur-Tidning No. 10, 1803.
39 Cf. the explanation of programme “Till Svenska Allmänheten” (To the Swedish Public), Åbo Tidning No. 63, 1802: “...but we would try, with unwavering respect for our press freedom laws and without particular devotion to any one school or sect, to give them such true, impartial and amenable things that our readers would have no reason to accuse us of violence, injustice or pettiness”. According to Lagus 1875, p. 9.
40 Björkstrand 2012, p. 139.
41 In Allmän Litteratur-Tidning, see for example No. 2, where p. 11 on the review of Läsning i blandade Religionsämnen, or No. 15, where p. 1 on the review of D. Joh. Chr. Döderleins Christlicher Religions Unterricht has N. M. Tolpo’s imprimitur (“may be printed”).
42 Lagus 1875, pp. 10–12. N.B.: No. 103 of Allmän Litteratur-Tidning (the penultimate issue) lacks the censor’s imprimitur, despite it containing material of a theological nature (perhaps this is also in connection with the confiscation). The reviews of Möller’s Läsning i blandade Religionsämnen were included in Nos. 2, 3, 4, 5, 6, 76, 77, 78, and 79 of Allmän Litteratur-Tidning. 1803.
43 Nurmio 1934, p. 27.
44 My thanks to Pasi Ihalainen for pointing out the differences in the political vocabulary, which he brought up at a symposium called Statsnatten arranged by the Society of Swedish Literature in Finland on 29 October 2015.
45 Knif 1985a, pp. 31–37.
46 “Om några hinder för Finlands litteratur och kultur” (On Some Obstacles to Finland’s Literature and Culture). Aura 1817–1818. The article is referred to in quite some detail in Wrede 1999, pp. 204–206.
47 Regarding the debates in Mnemosyne, see Knif 1985, pp. 71–89; Knif 1999a, pp. 211–214.
Literature reports also occurred in Åbo Morgonblad. Arwidsson’s friend Lorenzo Hammarsköld contributed to this section with surveys of recently-published Swedish literature.

 Åbo Morgonblad 13 January, 27 January and 10 February 1821. Arwidsson published the following Swedish decrees: “His Majesty’s renewed ordinance and decree regarding freedom of the press and the freedom to write. Given in Stockholm, 26 April 1774”; “His Majesty’s gracious ordinance, on a general freedom of the press and freedom to write. Given at Drottningholm Castle, 11 July 1792”; “His Majesty’s gracious warning, against violation of the ordinance issued 11 July last on a general freedom of the press and freedom to write. Given in Stockholm Castle, 21 December 1792.”

It was reasoning similar to that A. G. Silverstolpe had stated ten years earlier as a member of the Committee on Freedom of the Press: “I have stated the purpose as being the enlightenment and preparation of public opinion. I believe that every imperfect institution of the State must be broken down in a revolutionary manner, if it is not gradually improved.” Quote after Hirschfeldt 2009, p. 398.

In several places in Arwidsson’s Åbo Morgonblad, in particular 23 June 1821 (quote from that issue).

“Betraktelser” (Observations). Mnemosyne, February 1822.

As late as 1850, and as a result of the general unrest in Europe after the revolutionary year of 1848, a ‘language edict’ (as it was known) distinguished between Finnish and Swedish in its prescription that only printed matter with religious or economic content could be printed in Finnish – an instance of the repressive policies that marked the era of Nicholas I and its final phase in particular – and at the same time a belated echo of the authorities’ perceived need to protect the people.

Tommila 1988, p. 102.

Tommila 1988, p. 102.

Ordinance regarding Censorship 1829, § 17:2–5.

Ordinance regarding Censorship 1829, §§ 20, 21, and 34.

Ordinance regarding Censorship 1829, § 24.

Tommila 1988, p. 104.

Knif 1985a, pp. 38–42.
The legal heritage of 1766

HANS-GUNNAR AXBERGER

The first decades

The 1766 Freedom of the Press Act

The 1766 Freedom of the Press Act (FPA) was ahead of its time in several ways. However, Sweden was not the first country in which ideas about press freedom emerged. In England, censorship had been banned as early as 1695, and in Holland restrictions were lifted even earlier. But the 1766 Act was the world’s first comprehensive legislation of its kind. It also had a constitutional character. Earlier in 1766, the Riksdag had passed another act, stipulating that the constitution could only be changed if it had been prepared by the previous Riksdag.

The 1766 Freedom of the Press Act seems strikingly modern in philosophical terms. In free translation to a slightly more modern idiom, its preamble has the following wording:

We acknowledge that We have realised the great benefit enjoyed by the public of a righteous freedom of the press. Unfettered mutual information about all sorts of useful subjects does not only lead to the growth and dissemination of sciences and good crafts, but also gives more abundant opportunity to our faithful subjects to better learn and value a wisely instituted form of governance. We have also found that this freedom should be considered as one of the best aids to improving the morals and promoting obedience to the law, as misuse and illegal acts become known to the public through printing. Therefore We have found that previous enactments in this area are in need of proper correction and improvement, so that all ambiguity and such compulsion as are irreconcilable with these purposes may be removed.

In this respect --- We have found that the previously instituted office of censor now should be entirely abolished. Nor shall it be incumbent upon Our or the Realm’s chancelleries to supervise, approve or disapprove of texts intended for publication, instead the authors themselves as well as the printers shall be responsible for what is issued by publication in accordance with this Our gracious enactment, through which previous regulations about censure are completely rescinded. [---]

1 This is an edited and shortened version of the corresponding essay in the Swedish edition of this book. For references and sources in Swedish, see that essay (Den svenska tryckfrihetens rättsliga utveckling).
It is important to observe that the stated purpose of press freedom was societal benefit. There is no trace of individual freedom or natural rights. The freedom of the press and the right to disseminate public documents were considered to be vital in the political interplay of the time. The rights of individuals came later, and as an afterthought. This view would prevail for a very long period in Swedish constitutional thinking. The purpose that can be read in the 1766 preamble is of the same nature as the one invoked nowadays.

The new Act was clearly influenced by the ideas of the Enlightenment, but it was even more a product of the Swedish Age of Liberty. This era got its name from the freedoms appropriated and enjoyed by the Parliament after the Caroline absolutism had been overturned. It was a formative period with several pre-democratic tendencies. Nevertheless, there was widespread dissatisfaction with the state of things, one of them being censorship, which prevented any criticism of society and any new ideas from becoming heard.

Freedom of the press is what we primarily associate with the new order of 1766, but it should be noted that the major part of the 1766 legislation consisted of provisions governing the right to print official documents.

*Freedom of the press under Gustav III*

The new law meant that the idea of freedom of the press had become codified, but not that it was entirely accepted. It could perhaps be said that political unrest facilitated our first freedom of the press legislation, but also prevented it from taking root. Five years after its enactment, Gustav III was crowned. As it turned out, he was firmly determined to end the liberty of the Parliament. In 1772, he carried out his first coup d’état and introduced a new Constitution, according to which all former constitutional laws were abolished. In 1774, he replaced the Age of Liberty’s FPA with an Act of his own. As one scholar writes, freedom of the press then became “entirely dependent upon the King’s pleasure”.

In Erik Lönnroth’s biography “Den stora rollen. Kung Gustaf III spelad av honom själv” (*The Great Role. King Gustaf III Played by Himself*), the author devotes barely one page to the establishment of the 1774 Act. He notes...
that the King often spoke in favour of press freedom, whereas the new legislation circumscribe this freedom in decisive ways, but he abandons any attempt at closer analysis of the King’s apparently ambivalent attitude with the resigned observation that consistency was not the King’s strong suit. Against this can be cited Stig Boberg’s dissertation, which is entirely concerned with Gustav III’s attitude to freedom of the press. Boberg’s view is that the King’s press policy was both well-considered and calculated. He
waited as long as possible to give his opinion on the validity of the 1766 Act, as the legal uncertainty suited him well. When he was finally forced to take a stance, he used the attention the matter had attracted to raise freedom of the press and to spread his supposedly enlightened message across borders – copy to Voltaire etc. The impression of a cunning and flexible press policy was reinforced by the King’s tactic of managing oppositional writers by quietly buying them over to his side instead of taking their publications to court, which could create unwanted attention. In his ambition to analyse and manage public opinion, Gustav III emerges as a modern power-seeking politician. To him, freedom of the press was ornament and decoration, not an object of use.

However, Gustav III appears to have lacked the fully-fledged politician’s ability to let reason master his feelings and, as noted above, he also lacked in consistency. His brother’s wife, Duchess Hedvig Charlotta, who left extensive diary writings to posterity, comments on her brother-in-law’s attempt to use the police to block publications that annoyed him:

My view is that these texts are barely more than a dog’s barking. But as the police take them seriously and often forbid their sale, the attention of everyone is instead drawn to them. Using illegal means, attempts are now made to acquire texts that would otherwise have been forgotten. Every King should expect unpleasantness of this kind, which is after all too insignificant to warrant paying any attention to it. However, the King has not managed to remain indifferent, but has been ill the last few days, this being thought due to the libellous pamphlets.

In her rather cooler analysis, the Duchess expresses what frustrated provocateurs two centuries later would call repressive tolerance, and which is nowadays standard advice in media training.

As far as is known, no measures to reinforce press freedom were taken during Gustav III’s reign. He gradually undermined it and eventually replaced it with its very opposite. Hardly anything remained of the 1766 Act when he died after the attack at the Masquerade Ball in March 1792.

The Reuterholm era

Following the death of Gustav III, his brother Duke Karl became the country’s formal regent during the Crown Prince’s minority. On Karl’s orders, a form of censorship was immediately introduced for “political and moral texts”, which had to be submitted to the police before they could be printed. Duke Karl later chose as his closest associate a former friend and adviser, Gustaf Reuterholm. One of the latter’s first measures was to issue a directive regarding freedom of the press.
The legal heritage of 1766

The 1792 FPA – authored by Reuterholm personally – is characterised by a romantic, almost pompous rhetoric. It was not divided up into paragraphs and lacked legal systematics, which made it look more like a proclamation than a law. At the time, it was first received as a step in the right direction, but later with increasing scepticism. As early as autumn 1792, there were signs that Reuterholm’s praise of freedom lacked any corresponding legal value. In a relatively short time, the policy shifted to detailed control over the public debate. In the troubled times that prevailed, Reuterholm and Duke Karl saw “Jacobine” tendencies, i.e. a development inspired by the French revolution.

“The Iron Years”

In 1796, the Crown Prince reached his majority and acceded to the throne as Gustav IV. There were some expectations that the new King, who immediately got rid of Reuterholm, would bring with him a more refined cultural climat. But it soon became apparent that the young King held no sympathies whatsoever for liberty and enlightenment. The expression “the Iron Years” hints at the spiritual poverty with which Gustav III’s son replaced his father’s more brilliant era.

Fear of “the French disease” increased. With the declaration of the Republic in 1792, France’s royal house had been brutally shut down. Control of the press was essential in order to prevent ideas of this type gaining hold of Swedish minds and undermining the position of the King. The measures taken were effective; “the censorship of foreign newspapers organised by Gustav IV has probably done its job with considerable precision”, wrote one historian. They also meant that the Swedish population was for a very long time kept in ignorance of how events and ideas were developing in the surrounding world.

The sensitivity concerning reports relating to conditions in France was raised to an almost bizarre level. For example, the King stipulated how the French Emperor was to be designated, namely as *M. Napoleon Buonaparte*, later changed to simply *N. Buonaparte*.

Like Reuterholm and Duke Karl, Gustav IV was not content with passive control. He agitated for his interests, for example by influencing the contents of foreign newspapers. He took an active personal part in opinion-forming. According to one scholar, it was no more than a slight exaggeration to say that the official Swedish newspapers were edited by the King himself.
The Constitution of 1809

The 1809 Instrument of Government and the 1810 Freedom of the Press Act

On 13 March 1809, Gustav IV was apprehended by a group of officers. He was detained and a few weeks later forced to abdicate. A constitutional struggle followed. Some of the groups behind the coup d’état had mostly sought to remove a King who was ruining the country, but were not looking to change the form of government. Others wished to go further and strove for a clear balance of power between the King and the estates. The second group turned out to be strongest.

Intensive efforts to give Sweden a new Constitution resulted in a the 1809 Instrument of Government, presented on 6 June that year. It stipulated that a further constitutional law, a Freedom of the Press Act, should be enacted later, but there was also a declaration defining the freedom of the press. The declaration, which remained in force until 1973, was worded as follows:

Freedom of the press entails the right of every Swedish man, without any previous obstacles introduced by the public powers, to publish texts; to later only be prosecuted for their contents before a court of law, and to not otherwise be punished therefore than if these contents breach a clear law, enacted to preserve public order, without restraining public information.

After some debate – where the representatives of the Church vainly struggled to keep censorship for religious texts – a new Freedom of the Press Act was adopted in March 1810. It reminded of the Act of 1766. Apart from the ban on censorship, which by including theology had no exceptions, the Act was based on author liability, right to anonymity, access to public documents and surveillance by the courts. Privileges and monitoring via government representatives, etc. were not allowed. The printing industry was made free, long before the rest of the guild system was abolished.

Developments after the adoption of the 1810 Freedom of the Press Act

Although it was adopted as a constitutional law, the new FPA was not uncontroversial. In retrospect, it can be stated that the process that the introduction of the Act constituted was not yet complete. The rapid change from Gustavian darkness to liberal enlightenment encountered an almost immediate reaction. The press at this time took liberties that aroused ir-
ritation both within and outside the country. Neighbour states issued demands for measures on the part of the Swedish Government; measures that the new FPA did not allow. Foreign leaders showed no understanding of such constitutional obstacles. For example, an opinion published by an anonymous author about Russian initiatives to influence the election of a new King would have been perceived in Russia as sanctioned by the Swedish Government, unless the Government took forceful measures against the publisher.

From this point of view, there was a need to restrain the press and to control publicity. It was not only those who had opposed press freedom from the start who questioned the new order. Even former adherents now joined the sceptics. This became apparent when the parliamentary Committee on the Constitution reconvened in the autumn of 1810, during an extraordinary Riksdag session. The Committee proposed limitations and stated that its altered attitude was due to abuse of the new freedom.

A crucial scene-shift had occurred with the choice of successor to the throne. Already as Crown Prince, Jean Baptiste Bernadotte – later Karl XIV Johan – became the country’s leader. In short, he was a man of action with little or no understanding of press freedom as a constitutional principle. As the head of State, he was of an entirely different calibre than Duke Karl, whose lame attempts at influencing events after the coup d’état had been fairly easily countered by the estates. He immediately became very influential. When he acted on the issue of press freedom, for example by dropping hints about his trump card: the threat of resigning the crown and yet again making the country leaderless – it had impact.

The 1812 Freedom of the Press Act

In 1812, the Riksdag assembled again. A bill including proposals for changes to the FPA was introduced. It stated, inter alia, that the publication of periodicals would require a licence, which could be suspended. If the bill had been dealt with correctly, it would have been remitted to the Constitutional Committee, whereupon the Committee could have made proposals, which could not, however, have been adopted until the following Riksdag. Instead, it was dealt with immediately. Based on the bill the Committee produced a proposal for a new FPA, which was adopted on 16 July 1812.

The fact that the Riksdag was in breach of the Constitution when these changes were made has been noted many times. The estates of 1812 were aware of this; it was pointed out in reservations during the proceedings. Why did the parliamentarians still act in this way? The readiest explana-
tion is that the politicians of the time did not consider themselves as fully bound by the Constitution, but allowed themselves some room for discretion. The FPA had brought with it problems that, for many of those who had longed for liberty, were as depressing as they were unexpected. The Act now stood in the way of measures that were generally regarded as reasonable and in the country’s interest. Moreover, it contained significant formal flaws. On top of this there was a strong, almost pleading argumentation from his Royal Majesty, speaking for the Crown Prince:

His Royal Majesty’s sole intention and endeavour is, by removing disorders and reinstating social institutions, to prepare the way for the noble prince who will one day be His Royal Majesty’s successor. Through conquering danger and difficult circumstances, he has learnt to protect the rights of freedom and human rights by placing the surest guard on the efficacy and sanctity of the law; he shall also know how to during the exercise of his royal calling follow and maintain the fundamental principles that formerly reinforced his arm, and, while a frank writer with open intentions and serious feelings for their purity shall find united support in Him and the law, anger, violation and slander shall give way to his open and manly gaze.

In reality, this plea must have turned the matter into a vote of confidence. When the issue was debated, the Court Chancellor also made it very clear what it would entail to oppose the successor to the throne’s will, when he emphasised the dangers that threatened if the Crown Prince “was torn away from us”.

Withdrawal of periodicals

“The suspension system” that was introduced in 1812 meant that everyone wishing to publish a daily paper or periodical had to apply to the Court Chancellor in order to receive a permit. Such a permit would be issued if the applicant had not been convicted of an infamous crime or declared unworthy of representing others.

The permit could be withdrawn if the publication was found to be a danger to public safety, had infringed personal rights or had been of a libellous character. In such cases, the Court Chancellor could order the publication to be suspended by an interim decision that was executed by the police. The final decision was made by the Government (the King’s Council), which also had the task to decide whether the editor should be prohibited from publishing other daily papers or periodical writings in future. The latter turned out to be something of an Achilles Heel in the system, as in practice it was aimed at individuals, not at the publication itself. Consequently, the publication could, after being withdrawn, reappear under a slightly modified name with a new publisher.

Historical research shows that the suspension system was used in a both legalistic and capricious manner. The emerging press adapted by using frontmen ("ansvaringar"). That method has been particularly associated with Aftonbladet, a prominent newspaper of that time, which despite many withdrawals continued its operations using almost identical titles: The Newer Aftonbladet, The Fourth Aftonbladet etc. The actual publisher remained the same throughout, namely the well-known Lars Johan Hierta. Other ways of getting around the system were also practised, such as replacing a periodical by ad hoc publications that were sent to the subscribers on a more or less regular basis.

It is uncertain whether the suspension system made any real difference. The newspaper men do not appear to have been particularly afraid of repression at the time. The Court Chancellor described the system as powerless, once the newspapers learnt to keep publication permits in stock, hateful, as those affected by it did not learn why the decision had been made, and as arousing public curiosity, which promoted interest in newspapers and thereby their market potential.

Introduction of the jury

As already mentioned, the reintroduction of press freedom in Sweden led to a reaction. Among the legal means discussed to control the liberated press were courts made up of laymen. It seems that there was an expecta-
tion that people who were not legally trained would exercise the necessary supervision more effectively.

After having been discussed at the 1810 Riksdag, the jury issue reappeared in 1812. The proposal presented that year was rejected but adopted by the Riksdag in 1815. According to accounts from those deliberations, the crucial reason was the abuse of the freedom of the press, and the fact that the jury institution was seen as an instrument to correct this.

However, the introduction of jury trials could also have been inspired by the ideas of the Enlightenment. Its philosophers argued that everybody had the right to be judged by their peers. England was cited as a model, where layman jurors had been in use for a long time as this was considered to protect individuals against power abuse and arbitrariness. Ideas of this kind are expressed by Montesquieu and others. He wrote: “Judges must... be of the same social standing as the accused, or his peers, for him not to believe that he has fallen into the hands of people who are naturally inclined to use violence against him.” The Swedish courts of the early 19th century were not regarded as fully independent of the Government, closely connected to the King and the Council as they were.

So, the idea of using a jury in freedom of the press cases might at least partly have been a result of influence from Enlightenment philosophy. It should be noted though, that Sweden has never adopted a general jury system; legal proceedings in freedom of the press cases are to this day the only part of the judiciary where a jury is used. Therefore, it remains something of a riddle why it was introduced; there were probably several causes.

One of these is a certain lack of faith in courts and legal formalism that often emerges in Sweden’s constitutional history. When it comes to freedom of the press, “the politicians” have always wanted to retain control over its limits. The freedom of the press jury can be seen as a tool in this striving.

The innovation meant that legal actions concerning the content of a printed publication would be tried by laymen well known for their civic virtues. Those who are familiar with today’s procedure recognise the procedure. Two centuries have passed, but the regulations are strikingly similar. One difference is, however, that the trial then was inquisitorial and conducted in writing. First the court completed an investigation of the facts, which could take some time, and then a jury was appointed to try the case based on the court’s documentation.

Any hopes there had been that the jury would serve as a repressive tool were not fulfilled. The new order was soon also criticised for legal inconsistency and other flaws. Demands for change were raised. The issue was discussed in a lively manner in the Riksdag both 1828-1830 and 1834-1835. Political horse-trading, where King Karl Johan’s side offered to abolish the
possibility to withdraw newspapers if the jury also disappeared, occurred. “The price of getting rid of the suspension system is nothing less than giving up the jury. Truly a high price to pay!” one member of parliament burst out. The liberals and the press representatives, whose influence steadily increased under the constitutional protection, had learned to appreciate the jury as guardian of their independence, and the royal efforts foundered. The jury prevailed while “the suspension system” gradually lost ground.

The 1815 FPA from today’s perspective

The 1766 FPA was a remarkable constitutional break-through. As shown above, the act and its principles were not particularly resistant. After only a few years, Sweden was brought back to what was, for the era, a more normal level of control over the press; darkness fell on Gustav’s days, despite the “shimmer” his admirers prefer to talk about. When they ended, Reuterholm and his declaration removed some restrictions, but only temporarily, and with the “Iron Years”, oppression was back. The process may seem dialectic: ideals versus power politics, desire for freedom versus need for control. The underlying societal development follows a similar pattern: from Caroline autocracy and dictatorship to political freedom and “parliamentarianism”, which turns back into new forms of autocracy, which in turn encounters resistance. In 1809, a turning point was reached. Oppression is now definitely over, and the soil is more favourable for the seeds of freedom that never really took root in 1766. In other words, Sweden did not achieve its press freedom that year; instead the 1766 Act was the start of something that, strictly speaking, was not fully accomplished in 1809 either.

The dialectics between liberty and control continued during the next decades, albeit with less drama. The principles of press freedom became accepted in ever-wider circles, and the pendulum did not swing back as vigorously as in the 18th century. 1815 seems to be a suitable year for a brief halt. By that time, with the introduction of the jury system, most of what still characterises this part of the Swedish constitution was in place.

Nowadays, we say that our constitutional laws governing freedom of expression are based on a number of cornerstones: exclusivity (matters concerning freedom of expression are exclusively regulated in constitutional freedom of expression acts), ban on censorship, freedom of establishment (printing, publishing and dissemination of publications are free businesses), list of offences (only offences specified in the constitution can be punished), right to anonymity (for authors, journalists and sources of
information), sole responsibility (only one formally and beforehand pointed out person can be held legally responsible for content), freedom to communicate information (contributors to media content are protected from punishment and reprisals) and extraordinary rules of procedure (the Chancellor of Justice is the exclusive investigator and prosecutor, right to trial by jury etc.). How much of this existed in the law of freedom of the press that developed in Sweden between 1766 and 1815?

Exclusivity

Concerning exclusivity, it should be noted that the constitutional order of that time was not the same as today’s. It seems unclear how the Constitution was regarded by legislators and authorities in the early 1800s. As described above, the provisions on withdrawal of publications were introduced in a way that, to us, appears entirely unconstitutional. The process was also questioned by contemporaries, but it happened nevertheless. This is a fact, and the authority to withdraw was frequently used. There was no constitutional power that could stop it; nor any courts that could rule on the legality of the process. Other changes to constitutional laws, such as the proceedings during the introduction of the jury system, show that the constitutional structure was not set in stone (and it would take time before it was). Nor can “constitutional protection” have been perceived in the same way then as now. This is clear from the actions the authorities allowed themselves during the initial period, when non-constitutional decrees of various types were issued and implemented.

This does not mean that the constitutional status of the press legislation was insignificant. At least after 1809, it was certainly taken into consideration. And even if the norm hierarchy was not always respected, the FPA was still based on the same principle of exclusivity as today. The introductory paragraph stated that publications could not be charged other than under the FPA, whereby a publication was defined as “everything that through printing is laid before the eyes of the public”. This was intended to be understood verbatim, which is illustrated by the fact that literary ownership right (copyright) was regulated within the framework of the Act.

Censorship and freedom of establishment

Censorship is easier to follow. It was prohibited in 1766, and has never formally reappeared, although it came close to being reinstated during World War II. In practice, however, methods amounting to censorship were used
by the Gustavians. In view of the fact that that supervision of religious texts also continued until 1809, the development follows the general pattern, i.e. that press freedom was achieved gradually. Despite this, the ban on censorship as a fundamental principle is still the feature that remains mostly as it was when comparing then and now.

Censorship in the older days could be perceived as a good thing. In particular, those who were appointed to carry out the task – the censors – saw themselves as servers of society. As Jonas Nordin puts it, it was a question both of consumer protection and concern about the spiritual well-being of the general public. Why would such a well-intentioned scrutiny be considered worse than sanctions against printed and published matter? Are the latter not equally harmful to the free exchange of ideas and opinions as surveillance beforehand? Obviously, freedom of expression can be choked not only through censorship, but also by austere repression that makes individuals censor themselves. However, administrative interventions in advance are much more efficient tools for controlling the flow of information than police and court proceedings, carried out in public, directed against something that has already been publicised. When everything and everybody is subjected to the more-or-less arbitrary approval of state guardians this is also a violation of the spiritual liberty of individuals. For free citizens, there is a difference between being your own scrutineer and needing to ask the authorities for approval. Censorship, which by definition takes place in advance, to the suppression of all free voices, is thus in its harmful effect and human rights-violating nature a very different matter than the opportunity necessary in every society to ensure, through post-event trial, that freedom is not abused at the cost of other rights and legitimate interests.

Freedom of establishment for the printing business was one of the most important achievements. General freedom of trade was not introduced until much later, and the de-regulation of the printing and publishing trades was of great importance for the emerging newspaper industry. The “suspension system” was a disfiguring inkblot on the liberal agenda, but even if it exerted a restraining and cooling effect on what was printed and disseminated, it appears with hindsight mostly as a lingering defence from an ever-weaker resistance from “l’ancien régime”.

List of offences

The ban on censorship was aimed at control beforehand and permit requirement. It was and is not meant to be a carte blanche to print anything
at all. As is the case today, the constitutional act listed the offences that could result in criminal charges. Among the things that could be punished in court were offences one would expect to find, namely publications insulting the King, the Church, the estates, public officials etc. Other examples were encouragement to mutiny and rebellion, breach of secrecy, attacks against an individual’s honour, sexual offences, indecencies, etc. A provision that was characteristic of the era penalised views and opinions about nations and states that defamed them or could lead to discord with foreign governments. An offence that would become controversial at a later stage concerned mendacious information and distorted statements to the confusion and misdirection of the public.

The list of offences reflects its era, in the same way as today’s corresponding list reflects our times. The crimes against religion and majesty have long since been removed. The same can largely be said about the vilification crimes; only libel remains in this category. The provisions involving indecencies, obscenities, pornography etc. disappeared from the list in the 1970s, but child pornography as well as depictions of sexual violence have since become criminal offences again. A provision related to the rule on “mendacious and distorted statements” that was also removed in the 1970s was “belying of authority”. The provision was abolished following a notorious case concerning an article written by Jan Myrdal, where he alleged that members of the Supreme Court were judging in favour of their friends (see below). Dishonouring the flag etc. (similar to the prohibition against vilifying foreign states) was de-criminalised during the same period.

**Liability and anonymity**

The liability system with its principle of sole responsibility and the right to anonymity are linked. These parts of the regulation were among the most interesting innovations from 1766. However, it appears that the purpose of anonymous publishing has not always been out of fear of reprisals. “Anonymity was seen as a guarantor for an unbiased and fact-based debate,” one scholar writes, and quotes an author from the 18th century who considered it proven “that an anonymous thought, proposed in a public paper, actually gains more trust and accomplishes more than one signed by a known actor”. The view lingers on in today’s – albeit ever rarer – unsigned editorial articles, but is probably otherwise a stranger to modern by-line journalism.

Fear of reprisals was emphasised more clearly by a governmental committee around a century later. Protection of anonymity, and thus indirect-
ly the rules of liability, were then given the justification that is still maintained, and which is expressed in the following, often cited, quotation:

The continuous self-examination, which is necessary, not least in a society of our limited dimensions and within a people of our character, requires efficient protection of anonymity. Sensitivity to the social environment: family, superiors, friends, business connections etc., and the fear of mental or economic discomfort exercise among us an overwhelming pressure on the individual’s freedom of expression. Clearly, the democratic development, towards which society is tending, does in no way entail any change in this respect, quite the contrary. False “esprit de corps” and “solidarity” remain harmful factors to reckon with. Against this pressure, protection of anonymity is the safety valve, which in many cases alone enables words that ought to be said to be pronounced, and facts that ought to be uncovered to be uncovered.

Irrespective of whether one or the other was emphasised, the contemporary constitutional legislators clearly found it important that the rules on liability facilitated anonymous publication. But as the ban on censorship did not mean that one could publish anything one wanted without risk of punishment, it was equally clear that anonymity was not the equivalent of no accountability at all. The technique of holding the printer responsible for anonymously published content was known but also notorious, because it had resulted in “printer censorship”. The solution to the dilemma was that authors were permitted to be anonymous in exchange for signing a name slip to accept responsibility in the event of a legal trial.

When comparing this system with that of today, it is important to remember that the principles founded in 1766 were based on freedom and responsibility being balanced in this manner. Today, it is sometimes said that it is, by definition, a violation of free speech to hold co-actors, such as printers, producers or operators, liable for publications of which they themselves are not the originators. Objections of this type affect the legislation on freedom of expression as a whole, since it is based on an almost strict liability for one sole responsible person. However, if the alternative is lawlessness and the kind of anarchy that can be found on the internet, the model consisting of pre-determined strains of responsibility, as developed within the Swedish press legislation, appears preferable.

**Rules of procedure**

Finally, when it comes to the extraordinary rules of procedure, the fundamental principle of 1766 remains, namely that the content of printed texts may only be prosecuted in court. The control over how press freedom is used consists of two parts: one being the Chancellor of Justice’s exclu-
sive investigating and prosecuting authorities, the other the jury system. As mentioned above, the latter has in many parts been retained fairly intact. The investigating and prosecuting rules have undergone some changes. Until 1840, the Court Chancellor was the main actor in the supervision system. In parallel, the Office of the Chancellor of Justice, introduced in 1713, played the role of prosecutor in court; a task that it still has today, although in a different context. But the major parts of the procedural system are the same now as then, given the development of the legal system as a whole.

An important feature that was included from the beginning was the *Instruction*, which instructs the supervising bodies to respect freedom of the press in various ways when investigative measures and prosecution are under consideration. The instruction partly still has the same wording today. Reports from older freedom of the press cases, show that publicists and their lawyers invoked it in their defence in the same way as it is pleaded in our century.

**Development after 1815**

*Many proposals, but the Act remains*

After the drama of the first decade of the 19th century, with 1809 as its constitutional climax, Swedish legislative history went into a fairly calm phase, slowly dismantling royal power in the shadow of emergent parliamentarianism. The breakthrough for democracy was confirmed when universal suffrage was finally introduced in 1921. The development of freedom of the press, seen from a distance, followed the same, apparently rectilinear, process.

Up until World War II, freedom of the press was characterised on the one hand by the continuous development of the fundamental principles, and on the other hand by several never-implemented proposals for entirely new freedom of the press acts. Instead, the 1812 Act remained in force until 1950. Reviews did take place, some of which were of lesser and others of greater importance.

The first important change during this long period has already been mentioned: the abolition of the “suspension system”. After having been used regularly in the early 1830s, it gradually fell into disuse, and was finally formally abolished in 1844, the same year as its noblest supporter, King Karl XIV Johan, passed away. It was one of several signs that press freedom by this time had not only taken root, but also grown. However, counteracting powers were not absent. There were new attacks on the jury
system, and also a proposal to abolish all of the FPA during the 1836–1838 Riksdag. During the remainder of the century, the Riksdag was also presented with no less than three further proposals to replace the FPA.

The first was in a Government bill to the 1853–1854 Riksdag. It was approved to the extent that its suggestions were adopted as pending further decision, i.e. left to the next Riksdag for final decision according to the rules regarding constitutional changes. At the time of the next Riksdag, however, opinions had shifted. The bill was then rejected. The same fate was suffered by yet another proposal to tighten the rules concerning the jury.

The event – which is described in detail in Johan Hirschfeldt’s essay – is worth noting as a crossroads in the history of Swedish press freedom. According to the original proposal (the one that was adopted as dormant) the FPA would no longer be a fundamental law; its aim was to lower the press from its constitutional pedestal. What the act was to provide instead was not clear. “The Riksdag was invited to buy the law in the Royal poke,” as one scholar writes. This hints at the fact that it was primarily the King – Jean Baptiste Bernadotte’s son Oscar I and his friends, who were also adherents of a stronger personal royal power – who pushed the issue. The defeat was therefore theirs. The unfolding of events confirmed that press freedom was beyond reach of “l’ancien régime. This victory was widely celebrated by publishers and academics.

*Freedom of the press ideals encounter a harsher reality*

The breakthrough of freedom of the press in Sweden coincides with the definite end of the period that is often referred to as “Stormaktstiden” (*the Era of Great Power*, which starts at the beginning of the 17th century and took a definitive end with the loss of Finland in 1809), and with the changing foreign policy ambitions that followed. We have been at peace for as long as we have had uninterrupted freedom of the press. In this sense, the freedom has never been put under the kind of pressure that war entails. However, the years before and during World War II revealed that our laws on press freedom are not immune to the sinister meaning of the saying *inter arma silent leges*.

The Nazi regime in Germany that came to power in 1933 was characterised by very advanced control of public opinion. Their demands reached beyond the country’s borders. Swedish representatives were immediately subjected to pressure aimed at restraining Swedish press criticism of circumstances in Germany. To begin with, the Government turned down the complaints. Östen Undén, Professor of Law, but primarily a prominent
official and politician described, as acting Minister for Foreign Affairs, in an interview how proposals of this type should be dealt with:

You inform the person in question that newspapers in Sweden are completely independent of the Government, and that this applies also to newspapers which, because of their political attitude, may be considered to be Government bodies. The Government or the Foreign Minister can therefore not undertake to exercise any kind of supervision of, or take any responsibility for, statements by the press.

However, as the war approached the uncompromising attitude started to change. Eventually, Swedish statesmen and officials became rather active in their attempts to prevent, formally and informally, any criticism of Nazi Germany. Later on official press policy reflected the development of the war. This more pragmatic than heroic strategy found support among other groups too. “Even the most earnest supporters of the Swedish freedom of the press must admit that it is worth a temporary suspension in order not to be strangled for ever by a victorious dictator state,” wrote a distinguished professor, Eli F. Heckscher, in a contemporary contribution to the debate about Swedish neutrality. He did not explain when and how the temporary suspension would end if the dictator state actually proved victorious, or in what way silence from the press was the best way to prevent that from happening.

The leading roles during the war years were played by the Minister for Justice, K.G. Westman and the Minister for Foreign Affairs, Christian Günther, and of course in the background the Prime Minister, Per Albin Hansson, who was himself a newspaper man. The analysis guiding them was that Sweden’s position of exposure in relation to Germany required compromises with principles such as the freedom of the press. The Foreign Minister’s argument can be summarised in his own words. Using marine metaphors, he described the dangers of a biased attitude among the Swedish press.

The one consists of opinion here at home being led astray which then in turn steers the ship of state off the proper foreign policy course, which in times like these may pass through straights that are so narrow that the least diversion will lead to grounding and shipwreck. The other danger consists of countries abroad getting the incorrect idea that the Government’s declarations of neutrality and other statements do not correspond to Sweden’s real political purposes, and this may in a fatal manner undermine trust in the Government from one or another distrustful great power.

It was thus both a question of the thoughtless domestic opinion being misled to influence foreign policy in a dangerous direction, and of a foreign power – Nazi Germany – placing greater trust in what was written by Swedish newspapers than what was said through official and diplomatic channels. The first argument appears to overlook the fact that the pub-
lic cannot only be misled, but hopefully even more be informed with the help of free mass media. The second assumes that the Government and the newspapers should speak with one voice, which is of course incompatible with the constitutional idea of press freedom. But neither of these arguments ought be ignored by those who live in calmer times than did the foreign minister who expressed them.

There were quite a few changes in constitutional law during the 1930s but they were mostly about meeting legal-technical needs. They were thus not triggered by the special worries of the time. But what was triggered that way was the most startling, from a principle point-of-view, legislative measure taken with reference to the danger of war, namely the decision to remove prohibition against censorship from constitutional law. Both the Instrument of Government and the FPA were changed in 1941 in order to facilitate censorship. The regulation included a Censorship Act containing the more detailed provisions. It was, so to speak, a military emergency act, which allowed the Government and the Riksdag to introduce censorship while observing a specific procedure. The legislation was much discussed.

In the Riksdag, the Prime Minister himself, Per Albin Hansson, tried to calm down opponents stating that they should “feel that a guarantee for ensuring these laws will not be abused is the fact that there is a Government with a composition of the kind the current Government has”. No decision to implement the Censorship Act was ever taken, and the constitutional changes were deleted when the war was coming to an end. The constitutional result was thus that the constitutional ban against censorship disappeared in 1941, but was reintroduced in 1944–45, and that no censorship was ever practised.

However, another obstacle to the dissemination of printed texts comparable to censorship was in fact introduced, in the form of the transport prohibition. This was established in March 1940, through an Act passed by the Government, which gave public authorities the right to prohibit a publication from being disseminated using public transport. One prerequisite for prohibition was that the contents of the publication had been intended to cause danger to the security of the realm, etc. Another prerequisite was that it had been established that the publication, following procedure before a jury, contained criminal statements. The procedure was, in this respect, not purely administrative. The Act was nevertheless constitutionally dubious as the FPA did not permit public authorities to interfere with the publication of printed matter. The view that the prohibition constituted such an interference was put forward by many. The ban on transportation was used quite a lot by the authorities. Once the fortunes of war finally turned, it became obsolete.
The 1949 Freedom of the Press Act

By 1944, the war was heading towards its inevitable end: the unconditional defeat of Nazism and Fascism. The time had come to restore traditional press freedom. In the summer of 1944, a governmental committee of experts was assigned to carry out a comprehensive review of the legislation.

The expert report was presented three years later, “Proposal for Freedom of the Press Act”, SOU 1947:60. It was closely aligned with the Swedish freedom of the press tradition. The experts wrote that they had “tried to trace the origin and development of the various provisions, and with this guidance clarify their essential meaning. [...] The proposal seeks to realise, with consideration for the demands of modern society, the fundamental ideas expressed in the 1766 Freedom of the Press Act and which have emerged during their continued development.”

The constitutional standing of the legislation was carefully considered. The committee did not wish to diverge from the principle of Section 86 of the Instrument of Government, namely that the regulation of freedom in its entirety should be part of the Constitution. Among other subjects examined was the jury. It was noted that the Government, in its directives to the committee, had highlighted the issue of layman influence i.e. the be or not to be of the jury. After balancing the various alternatives, the experts concluded that the choice was either a professional judge with a panel of lay judges or a jury, and recommended the latter. So, the jury system survived, once again.

The proposal from the committee was implemented. When the Government bill was presented on 2 April 1948, the Minister of Justice expressed that the importance of press freedom and its value for society could not be prized highly enough. The right to influence opinion and exercise criticism of the governance and administration of the realm through printed publications, and particularly by the daily press, constitutes, he continued, “in reality an existential condition for modern-day democracy”. He further referred to the principles that had been upheld for so long:

Earlier than in any other country, we here in Sweden, and in Finland, which was then a part of Sweden, received a statutory freedom of the press through the 1766 Freedom of the Press Act. This Act, which was of a constitutional nature, meant that the then-prevailing general censorship was abolished, except for certain religious texts, and was based on the basic tenet that any intervention against printed publications should only be by means of a prosecution in court due to a crime. Through this Freedom of the Press Act, was also introduced the for Sweden distinctive tenet that all public documents are freely available to everybody.
On some items, the Government bill differed from the report. The committee had proposed that the ban on censorship should also apply not only to public authorities but also to enterprises, organisations etc. According to the Government, this was going too far; it argued that measures taken by, for example, charitable associations against scandal papers and pornographic publications could be “very legitimate”. The ban was therefore given the scope it still has, i.e. it is aimed at public institutions.

One clear reinforcement of the constitutional guarantees for press freedom was the principle that freedom of the press offences should be described with their full prerequisites both in constitutional law and in penal law. The practical consequence is that new offences – limiting free speech – can only be implemented through constitutional reform, which requires two parliamentary decisions with a general election in between, while de-criminalisation – expanding free speech – can be achieved more or less overnight.

Censorship in wartime was carefully discussed. The issue had been commented on by the Swedish Publicist Club stating that unfettered news dissemination and opinion-forming remains one of the most effective ways, in critical situations, of reinforcing trust in the nation’s leadership and the willingness to resist external and internal enemies. It’s predictable that this view was held on the part of the press. However, in its bill the Government recalled that the military Commander-in-Chief had expressed himself in similar words. The Government agreed and concluded:

Censorship is dubious in peacetime; in war it can become a real danger to the country and the democratic system.

**Not just print**

Following decades of preparations and negotiations, a huge constitutional law project finally reached the finishing line through the adoption of a new constitutional law in 1974. With this, the Instrument of Government of 1809 – which had in practice been obsolete for a long time – finally became history, at the same time as a further step in the disassembly of the monarchy was taken when the role of the King was also formally made exclusively ceremonial.

The provisions relating to freedom of the press in the former Instrument of Government were transferred to the FPA; the 1974 Instrument of Government contents itself with a brief and prosaic reference that in matters of freedom of the press the FPA applies. On the other hand, it does include gradually increased guaranteed individual rights, and its first article underlines that the “Swedish democracy is founded on the free formation of opinion ...”.

Over the years, it had become ever more apparent that freedom of expression was not merely a matter for those who use print. Broadcasting was one thing; there, a monopoly applied, justified by limited broadcasting space. For other kinds of media there were, however, few reasons not to apply the same constitutional protection that had long been enjoyed by printed publications. The first governmental committee with the task to examine whether the constitutional protection afforded to the press could be extended to other media was appointed in 1970. The legislative process that followed is described in Bertil Wennberg’s essay.

Summary and conclusion

The foundation on which our tradition of free speech is based was laid in the FPA of 1766. The Acts of 1810 and 1812 developed the legal principles into a framework that remains today. All essential parts of the Swedish legislation on freedom of expression have roots in the period 1766–1815. If they were not invented then, they are direct descendants from that time.

Press freedom in Sweden was impelled by political and constitutional considerations, not by natural law-inspired ideas about individual rights and freedoms. Societal benefit as the purpose may have contributed to the understanding that governments and authorities have displayed for the need to restrict press freedom in unsettled times. The link to societal benefit has, however, also provided free speech with a stable political basis which has perhaps offered a stronger support than concepts of freedom and rights, which tend to become relative when an increasing number of rights must be weighed against each other.

Political commitment to this part of the legal system has remained very strong; lawyers have been kept at arm’s length. The attitude that developed from 1766 seeks to unite the need for legality (as a reaction to the legal uncertainty that Gustav III preferred) with a conviction that the people’s representatives should not entirely relinquish the control over how laws on press freedom are practised.

Demands for legality are most clearly expressed in the detailed constitutional regulations. By fixing as much as possible in precise provisions that can only be altered after two consecutive decisions in parliament with general elections between them, the room for short-lived opinions, arbitrary establishments or free-thinking judges to move the legal goalposts has been reduced to a minimum. There can hardly be any doubt that the constitutional concept – which by the way was invented at the same Riksdag as the one that adopted the 1766 FPA – has been decisive for the
development and preservation of the Swedish law on press freedom and freedom of expression as a whole

It is true that political control over legal implementation has been gradually relinquished by the Riksdag and the Government, but several features remain. Their respective legal representatives – the Parliamentary Ombudsman and the Chancellor of Justice – have central tasks in the area of freedom of the press, and the clearest expression of non-legal influence, the jury system, remains, despite having been constantly questioned over the years.

Since Sweden became a member of the EU, lawyers have now and then opined that the Swedish freedom of the press must become “more European”. However, Sweden has been a member for more than two decades, without any legal conflict relating to our freedom of expression regulations having arisen. Some consider that we are nevertheless forced to “harmonise”, but this is hardly the case. It is shown clearly in Chapter 10 Article 6 of the Instrument of Government that the degree of adaptation is determined by the Riksdag, as this concerns the foundations of our form of government, which we have not delegated to the EU.

In a different approach, doubts are expressed as to the realism in continuing the cultivation our heritage from 1766. The regulations are said to be complicated and out-of-date. The fundamental principles are, however, easy to understand. They concern:

- constitutionally fixed provisions
- a ban on censorship and other interventions beforehand
- access to official documents
- rules of liability permitting protection of anonymity and freedom to communicate
- supervision by courts with participation of a jury

It is true that the regulation has become complicated. This is due to layer having been added to layer in the regulatory framework, whereby legal precision has been prioritises, at the cost of comprehensibility. This should be dealt with, but is no reason for abandoning the basic principles.

The objection that the regulations are outdated is linked to the idea that the media landscape has undergone major changes, and is aimed primarily at the rules on liability. However, it has, to date, been possible to transfer them successfully to new media, including radio and television broadcasts and internet transfers. In fact, the liability rules are almost tailor-made for use with modern media. The more-or-less anarchic freedom that prevails on parts of the Internet should not be confused with freedom of expression under the rule of law.
When concepts of press freedom met reality in Finland

PÄIVI KORPISAARI

Points of departure

The historic development of freedom of expression in Finland has not been a steady, rising increase in freedom of expression and of the press. Instead the journey towards our current freedom of expression has meandered, and contains uphill as well as downhill stretches. To a large extent, this is due to the political and social circumstances under which Finland and the Finns have developed as a state and as a people.

Finland was part of Sweden from the Middle Ages until 1809. During this period, the legal history of Finnish freedom of expression was bound to the legal history of Swedish freedom of expression, which is described in several contributions to this volume. Finland was annexed to Russia in the Treaty of Hamina, signed in 1809 by Sweden and Russia to end the Finnish War. Finland became a Grand Duchy under the Russian Tsar Alexander I, who granted the country an exceptional degree of autonomy. During the Russian era, which lasted from 1809 until 1917, Finnish language and culture, as well as the Finnish economy, developed considerably.

This period under the Russian Tsar left its mark on the history of Finnish freedom of the press and freedom of expression. The Russification measures, as well as Russia’s domestic and foreign-policy situation, affected preconditions for freedom of expression and the press in Finland – they were sometimes loosened and sometimes tightened. Finns have persistently striven to remove obstacles to freedom of expression and freedom of the press, first under Swedish and then under Russian rule.

Freedom of expression was also affected by censorship during World War I, from 1914, by the four-month civil war at the beginning of 1918, after Finland had become independent, by what were known as the Republic’s Protection Laws in the 1930s, and by censorship during the second world war. Since the end of the second world war, freedom of expres-
tion has developed at a more even pace in Finland, even if this process has not always been trouble-free. By the end of 2015, the European Court of Human Rights had delivered 18 rulings against Finland in cases where it found that freedom of expression had been violated. On the other hand, in the World Press Freedom Index published annually by Reporters Without Borders in May 2016, Finland topped the list – for the sixth consecutive year.7

Sweden, circa 1730. For a further 80 years, Sweden and Finland would be one country. Archives of the Board of Lantmäteriet (Swedish National Land Survey).
In addition to ‘freedom of expression’, the terms print, press and opinion freedom have been used. These terms adequately describe the various component areas of freedom of expression, but none of them can be used as a synonym for freedom of expression. Today freedom of expression is also characterised by its exercise as a consequence of the Internet, and the various webzines and social media services published there. Still, to a large extent the history of freedom of expression is the history of freedom of the press, or of printing, since printed publications were the most important means of spreading knowledge before the arrival of electronic media. At the beginning of the 20th century, press freedom was closely associated with business and trade and the freedom to conduct them, so that restrictions to press freedom were viewed as also limiting the freedom to trade.

Freedom of expression in Finland prior to the period of autonomy

The legal history of freedom of expression in Finland is, to a large extent, the history of press freedom. In 1755 the first political periodical was published in Sweden, under the name En Ärlig Swensk (An honest Swede). And during the 1755–56 Riksdag, the estates began publishing Riksdag documents written in connection with the constitutional debate, in order to contest the views that the Sovereign and the court party had spread among the population. The estates also founded a newspaper, Riksdagstidningar, as a publication channel for parliamentary documents.

The history of press freedom and of public access to official documents has its roots in the Freedom of the Press Act adopted by the Swedish Riksdag in 1766. The act was adopted with the three lower estates’ unanimous vote, while the nobility voted against it. A Finnish rector, Anders Chydenius, who represented the Estate of the Clergy in the Riksdag, had taken an active part in drafting the act, and the idea behind it was largely attributable to a scholar of the Renaissance, Peter Forsskål, who was born in Finland. Forsskål was a reformist who considered the freedom to write what you please an important safeguard of democracy, which would contribute to revealing injustices and show how individual groups opposed the greater good. Forsskål hoped that this would encourage more people to read and take part in public debate, as expressions of discontent could lead to improvements of poor conditions, which in turn would reduce the need for e.g. armed conflict.

When it was enacted, the 1766 Freedom of the Press Act was extremely progressive. It laid down a material, and formal, framework for the free-
dom to write by stipulating criminal law liability on the basis of the content of the printed publication. The Act moreover stipulated public access to official documents. It laid down the right of anyone to draw up and publish accounts of the Riksdag’s work, with the exception of information classified as secret and documents belonging to the area of foreign policy. The Sovereign was to ensure that the reports were published well before the following Riksdag so that the citizens would know the situation in the realm and be able to present their view of the state of things, thus contributing to the Riksdag’s decision-making.

The Act also stipulated the right to publish MPs’ memoranda, other statements they had made in the estates, committee reports, minutes and decisions. The Freedom of the Press Act thus promoted a citizens’ debate on the exercise of political power, based on access to information via printed publications. At the same time, interaction was fostered between the Riksdag debate and the public debate amongst citizens.

The Act had a considerable impact, for as soon as it had entered into force public debate increased, as did the printing of political pamphlets – exponentially. Of all political pamphlets published between 1700 and 1809, 75 per cent are estimated to have been published in the eight-year period 1766 to 1774. As many as 80 periodicals were founded during the press freedom years. Many of these were short-lived, however. After the introduction of the Freedom of the Press Act, the idea also grew and spread that the will of the people should govern legislation and its execution.

The Act did not apply to religious publications, however. Freedom of the press was restricted by means of a ban on publishing texts that were blasphemous or contrary to the evangelical faith. The foundations of the system of governance were also protected by means of a ban on criticism of the realm’s Constitution. And it was further forbidden to insult the highest offices of the state, officials, as well as sovereigns, governments and individual citizens of foreign states. Freedom of expression was also restricted in order to protect morals, by bans on promoting obvious vices in printed publications. Still, the central principle was of freedom of writing, i.e. that anything which was not expressly forbidden was permitted.
The Freedom of the Press Act was only in force until 1772, when Gustav III repealed it and all other fundamental laws instituted after 1680 under the new Instrument of Government. The King took back the power to regulate press freedom autocratically by issuing, on 26 April 1774, a new Freedom of the Press Act without the participation of the estates.

The period of autonomy, 1809–1917

The growth of literacy in agrarian society

In the 19th century, Finland was more agrarian than the other Nordic countries. Even by the middle of the century, as many as 80 per cent of Finns earned their living from agriculture. Urban dwellers made up less than 7 per cent of the population, or just over 100 000 people.

Because of the low levels of literacy, freedom of expression was made use of primarily by the educated classes. At the beginning of the period of autonomy, Finnish-language literature was very limited and only a minority could read and write. In the 1830s, only an estimated 5 per cent of the male rural population could read and write. And even by 1880 only just over 12 per cent of all Finns over the age of 10 were literate. Thanks to their efficient education system, however, 40 per cent of the over 15s could both read and write by the turn of the century. In addition to improved schooling, other factors that contributed to rising literacy rates included the establishment of newspapers and their ever-growing circulation, the handling of money matters, jobseeking, the use of the calendar, increasing private correspondence and, more broadly, the transformation of Finnish culture from spoken to written mode.

The King, public officials and the Church exercised a firm social control at the beginning of the period of autonomy. Criticism of the machinery of state or its activities was not well regarded, as these were considered to represent the common good. Censorship was also used to counter internal and external forces for change in the country.

The early period of autonomy

Finland was annexed by Russia in the peace treaty at Hamina, on 17 September 1809, putting an end to the Finnish War. At the beginning of the period of autonomy, Finland’s freedom of expression legislation was considered a legacy of the Swedish era. The legislation in force was Gustav III’s Act of 1774, which was followed by what was known as the Reuterholm
Freedom of the Press Act (1792, with all amendments), which was issued by the regency that came to power after Gustav III and abolished his restrictions on freedom of expression. This period of increased freedom of expression only lasted six months, however, before censorship and privilege requirements were reintroduced. The regulation of press freedom was influenced by the Russian system in which attempts were made to control and mould citizens’ opinions with pre-censorship, by requiring that publishers support the regime.  

The preconditions for the press in Finland were unified with those of the Russian press by means of the 1829 Censorship Act. This was aimed at complete and centralised prior control of public debate and of scientific and artistic works. The provisions left room for interpretation, and in unclear cases the censors applied them in a way that limited freedom of expression. Moreover, the importation of foreign literature was restricted and censored. Professors at universities and others authorised by the Tsar could, however, bring publications into the country.

The Censorship Act instituted a censorship body, called the National Censorship Board, for all printed and produced works – with a Censorship Commission as its working committee. Censorship covered religion, the Tsar, the imperial family, morality and personal honour. The vague provisions of the Censorship Act allowed for great variations in the strictness of censorship throughout the period of its application, 1829–1865. On the whole, the Censorship Act affected the Finnish people’s exercise of freedom of expression to a very considerable degree throughout the long period of its application.

When censorship was tightened, demands for greater freedom of expression also increased. J V Snellman proposed the bourgeois-liberal principle for public access to official documents, which had spread around Europe in the 1840s and according to which the press should be a forum for opinion that was independent of government power. Related to this was the idea of the state as the servant of the individual, and the doctrine of the open market with free competition and formation of opinions. Still, Snellman did not propose unlimited freedom of expression, instead finding it acceptable that the state had a right to protect itself against abuse of freedom of expression. In order to avoid despotic rule by administrative officials, however, supervision should be carried out via the...
When concepts of press freedom met reality in Finland

courts and not by means of a censorship system. In order to maximise the benefits of freedom of expression, Snellman also considered it necessary to improve popular education. In 1844 Snellman founded a newspaper called *Saima*, which he used to disseminate his ideas until it was suppressed by Governor-General Menshikov. A tightening of censorship followed. Then in 1850 the Language Act was issued, under which only economic and religious publications could be published in Finnish. Observation of the Language Act was closely monitored. The Swedish-language press had greater leeway, though it was also subject to censorship. It was possible to carry out more varied publishing activities in Swedish, since the educated class was regarded as more capable of understanding complex matters, and of better considering its expressions of opinion, than the peasantry.

The freedom of expression of the Finnish-speaking population was at its weakest point around the middle of the 19th century. There was not even an impulse to test its limits, as publication opportunities were non-existent. The *Suometar* newspaper, for example, had to abandon international news at the beginning of 1849. Governor-General Menshikov instructed the censors that the newspaper was only allowed to publish

- religious edification and economic education;
- notifications about government regulations;
- information and warnings issued by the police;
- encouragement to undertake work and deliveries;
- encouragement to offer voluntary support to public or charitable undertakings.

Since journalists learned to use circumlocution in order to confound censors, who would not understand the true meaning of the text, Menshikov ordered the censors expressly to ensure that newspaper texts did not deviate from the spirit in which texts intended to be read by the people were to be drawn up. And as far as novels were concerned, greater strictness should be applied in terms of morality than for other genres of literature. A censor’s life was fraught with risk as well, as he could be punished for insufficient vigilance by being jailed, in the same way that the writer who breached censorship regulations could be. And indeed, censors would find fault with material allowed under the law, simply to prove their vigilance.

Because of these stringent regulations, newspapers did not always have access to texts that Menshikov would permit. In the absence of permitted material, they could be forced to halt publication temporarily or discontinue altogether. This led the limits for what could be published to be extended to include various other themes, e.g. Finnish grammar and dictionaries.
(although book reviews were generally not permitted), information about the appointments of public officials, natural events or such occurrences as had been caused by imprudence and could serve as warnings to others (one example was fires), and information about the price of agricultural products.42

According to Nurmio, one of the reasons behind the 1850 Language Act was to keep the Suometar paper in check.43 To protest the restrictions on freedom of expression, Suometar and its editor-in-chief, Paavo Tikkanen, began publishing long accounts of Bible stories.44 The Language Act and its stringent interpretation finally led Tikkanen, angered over censorship, to publish a biting farewell piece on 29 June 1850, before closing down Finland’s most important Finnish-language newspaper. He would eventually change his mind, however, and decide that a restricted paper was better than none at all. In 1851 he began publishing Suometar again, this time as its managing director.45

Finnish fiction also withered. When manuscripts were returned to authors with the notification that they had not been approved for publication under the current regulations, their energy to even begin work on any major literary project was sapped, as the immediate assumption was that publishing it would not be permitted.46

A brief moment of press freedom during the period of autonomy

Finnish opinion began to turn against censorship. In 1855 Tsar Alexander II assumed power. He proved to be a liberal sovereign, summoning the parliament in 1863. Economic restrictions were lifted, and the position of the Finnish language improved through a new Language Act.47 Freedom of expression was no longer the privilege of the nobility; instead peasants also demanded better status for the people’s language. The publication restrictions on Finnish literature were removed in the autumn of 1854, even though the Language Act was only repealed in 1860. A fierce debate raged in the press about the limits of freedom of expression. What was more, the Vice-Chancellor of the University spoke of freedom of expression in his opening address, and a citizens’ petition presented to the Senate demanded that censorship should cease. Students demonstrated against the censors, and did not regard the Office of the Censor as a respectable profession.48 New newspapers were founded. The younger Fennomans founded Helsingin Uutiset in 1862, while the liberals founded Päivätär.49
Turku Cathedral before the Great Fire, 1814. Painting by Carl Ludvig Engel. The National Library of Finland.
As senator, Snellman pushed for the institution of a press law. A draft bill was presented to the estates in February 1864, on the basis of which the 1865 Freedom of the Press Act was enacted. This act established, for the first time, press freedom as a civil right. Freedom of expression and of the press were still regarded as fairly equivalent terms, since printed newspapers were the most important public discussion forum affected by the legislation.50

The Committee on the Constitution, presenting its report in 1865, had considered regulating freedom of expression at the constitutional level, but this option did not gain enough support. One contributing factor was that the establishment of press freedom legislation was seen as the primary goal, and there was a sense that this should not be jeopardised by including other demands.51

The Freedom of the Press Act was progressive in that its basis was freedom of expression and not censorship. Legal protection was improved by defining liability issues more clearly than before, and press freedom cases were to be tried in the general courts. Judges were furthermore instructed to examine other evidence in addition to that cited in the lawsuit, and to consider the import of the publication as well as the context. Another innovation was that in unclear cases, verdicts should tend towards giving the defendant the benefit of the doubt.52

The act further laid down crimes against freedom of expression, such as blasphemy, treason and lese-majesty. Crimes also included insulting civil servants and public officials, ‘defamatory remarks’ against the empire, and ‘false rumours for the deception and misleading of the general public’.53

The freedom of the press was restricted by means of the obligation to set aside a security sum, based on the Russian model. This security sum was to be used to pay any fines, and had to be topped up once such fines had been paid.54 Newspaper publishers had to apply for a publishing permit with the National Board of Press Matters, and also had to provide detailed information about publishing projects. Permits had to be issued within eight days and could not be refused if conditions under the Act were met. Additionally, book printers had to know who was behind any text content. Liability for such content, however, lay with the publisher, not the printer or the bookseller. In practice, the permit procedure and the security sum requirement meant that the threshold to founding a publication was high.55

Despite the progressiveness of the Press Freedom Act, it was not received without criticism. *Helsingfors Dagblad*, for example, considered that it continued the old censorship line in a somewhat renewed form. The newspaper was particularly critical of the large security sums, and of the
fact that confiscations could be ordered without judicial review. Sanctions were also considered excessively harsh.\textsuperscript{56}

Finnish press operations were initially regarded as primarily a private business activity, intended to provide the business owners with a profit. Under the influence of Snellman and the liberals, a clearer picture began to emerge of the responsibility of the press in discussing issues of general significance, and in bringing wrongdoing to light.\textsuperscript{57} However, the role of the press as opinion-former only really came to the fore after 1863, when popular representation had become a part of political life in Finland. Public debate began to be regarded as the fourth estate, and the government and civil service corps, who had been comfortably in power, began to feel their position was threatened.\textsuperscript{58}

This period of freedom of expression was brief, however. The 1865 Freedom of the Press Act was temporary, and it was only in force from the beginning of 1866 until the end of the Diet in the spring of 1867. Press freedom conditions were also affected by the assassination attempt on the Tsar in 1866.\textsuperscript{59} A draft bill containing new restrictions was presented to the Diet for consideration. When the estates did not approve it, the Tsar used his constitutional prerogative to determine press matters by ordinance. The Press Ordinance of 1867, with provisions on censorship, became the basis of the monitoring of freedom of expression that ensued, and which continued throughout the final phase of the period of autonomy.\textsuperscript{60}

\textit{Press freedom restrictions from the 1867 Press Ordinance until the end of the period of autonomy}

The Ordinance regarding matters of the press in Finland was issued in 1867 by administrative procedure. It relied on a system of pre-censorship and publishing permits, as well as severely-repressive mechanisms of control.\textsuperscript{61} According to Harrinkari, the Ordinance exerted a significant impact on press conditions in Finland since it was applied to the monitoring of publications right up until 1919.\textsuperscript{62}

Once the ordinance had entered into force, freedom of expression came under intense pressure: works and plays had to be examined by the local press ombudsman, i.e. the censor, before publication. Publishing newspapers and periodicals required a permit, and additionally the proofs for each issue had to be delivered to the local press ombudsman for scrutiny. This pre-censorship did not, however, discharge the publisher from liability for content of the publication afterwards. In the worst case, the publication could be suspended temporarily or permanently by the National Board of
Press Matters or, from 1869, by the Governor-General if it contained an ‘incorrect interpretation’ of Finland’s position with respect to the empire. However, the suspension sanction was rarely used and anyway it was possible to immediately found a new publication with the same name as the one that had been suspended.63

In practice, the difference between the previous censorship system, which was based on retrospective liability, and the current system was not particularly great. The Press Ordinance provided a certain clarity, since acts that brought liability were more carefully defined than before.64 Parties could feature in the media, and the press could offer cautious opinions on current affairs. The number of newspapers tripled, and the number of issues published per week more than quadrupled.65 It was unusual for applications for publishing permits to be turned down, and less than 1 per cent of all newspaper issues published annually in the 1870s and 1880s were subject to censorship. Texts concerned with the Sovereign and the highest level of administration were closely monitored, while writing about events in the homeland was subject to fewer restrictions. Newspapers published in the capital were subject to stricter controls than those published in other locations.66

The existence of censorship nonetheless affected the content of newspaper articles, and overshadowed public debate on Finland’s political position. Pressure therefore grew for increased freedom of expression.67 During the 1872 Diet, the estates presented a petition to the Sovereign for the institution of a press freedom act. However, since liability was based on pre-censorship in other parts of the empire as well, Alexander II did not want to make any changes to the conditions in Finland.68

The Diet repeated the press freedom petition when Alexander III had assumed power in 1882. The petition requested that press matters be regulated by law, that pre-censorship cease and that press freedom cases be determined by the courts. The motion was repeated in 1885 and 1891. When nothing happened, the opinion gap between the Russian Sovereign and the citizens of Finland grew. The Finns’ view was that freedom of expression and an end to pre-censorship were necessary for society to develop in a peaceful manner. They also believed that a lack of information led to the spread of rumours. For their part, the powers-that-were in Russia feared that freedom of expression would lead to popular agitation and unrest.69

Contrary to Finnish wishes, developments led to more restricted freedom of expression. Alexander III tightened the monitoring of opinion in Finland in the 1890s.70 The country’s press criticised the narrowing of freedom of expression, and expressions of opinion were censored.71 Monitoring grew more onerous as a result of the 1891 Press Ordinance. It was transferred from the Finnish administrative authorities to the Gover-
nor-General’s Secretariat, and the Governor-General took the decisions on the granting of publishing permits to newspapers. He also appointed supervisors for press matters who were empowered to impose sanctions on publications if this was required for valid reasons.\(^{72}\) Between 1899 and 1905, 26 newspapers were suspended permanently and 46 temporarily.\(^{73}\)

One of the problems of the Press Ordinances that had applied in Finland was that they had not specifically or unambiguously defined the subjects or types of writing that were forbidden. The reasons for sanctions were loosely defined, since the main focus was on defining the position of the organisation that monitored press conditions and the legal position of the paper.\(^{74}\)

Nicholas II became Tsar in 1894. During the Diet that same year, all the estates presented yet another press freedom petition. The arbitrary censorship system and the Governor-General’s extensive powers were criticised. The petition further argued in favour of citizens’ traditional rights, the spread of education and knowledge, and social harmony.\(^{75}\) Despite the proposal, the Tsar decided that the senate would draft a bill based on the Russian censorship system.\(^{76}\)

Nikolay Bobrikov was appointed Governor-General of Finland in 1898. He tightened surveillance of freedom of expression and made use of all the powers bestowed on him by the Press Ordinance.\(^{77}\) And he demanded further powers from the Tsar. In 1899 he became authorised to issue warnings to newspapers. A censorship committee was set up at the Governor-General’s Secretariat. The following year Bobrikov became authorised to demand that a paper’s responsible editor be fired, on pain of suspending the paper, and as of 1903 he was able, under the dictatorship powers, to deport a number of undesirable individuals from the country. From 1904, newspapers could be subject to financial sanctions similar to those that had already been applied in Russia, e.g. bans on selling single copies or publishing private advertisements. Newspaper content was also influenced by the policy on granting publishing permits.\(^{78}\) In 1899 there were at least 400 interventions against the press. The highest number was recorded in the following year, after which interventions dropped to about 300 per year.\(^{79}\)

The censorship system gave individual officials considerable scope for interpretation, which was perceived as arbitrariness. Resentment of the censorship system grew among Finns, also because it was linked to the Russification process.\(^{80}\) The power to close down papers granted to the Governor-General in 1891 was furthermore criticised in the petitions for a press freedom act in 1894, 1900 and 1904–1905, because it was seen as contrary to the protection of property enshrined in the 1772 Instrument of Government.\(^{81}\)
The papers, tired of press interventions and sanctions, began using veiled forms of expression. Since the Press Ordinance only required publishing permits for periodicals, Finns began issuing publications which were similar to newspapers in appearance and content, but which were not numbered and whose names varied. In place of daily newspapers, moreover, an underground press and a literature of pamphlets began to develop. Material was printed abroad and smuggled into Finland under the noses of the censors and criticism of Russian rule spread throughout Finland.

The struggle for increased freedom of expression continued. During the 1900 Diet it was proposed that newspapers could be suspended only by means of a court order, and also that other injustices in connection with the supervision of the press be removed. The final objective and hope was to institute a press freedom act that would be approved by the Diet, but no one dared present such a far-reaching proposal at that point. Petitions that a draft bill with a proposal for a press freedom act be presented to the estates for consideration were repeated during the Diets of 1872, 1882, 1894, 1900 and 1904–1905.

Discontent with the restrictions grew, and the struggle for increased freedom of expression continued importunately. At the 1904 Diet, each estate presented a motion for freedom of expression. These motions could not be debated, however, before the general strike of 1905 began.

The Burghers wanted to turn the strike against the Tsar and Russia, while the core component of the strike, the working class, turned against not only the Tsar but the Burghers as well. The labour movement demanded that fundamental political rights such as freedom of expression, of the press, of assembly and of association, as well as the vote, be guaranteed and that a parliamentary reform be carried out and a fundamental law instituted. Pre-censorship was abolished in the Tsar’s November Manifesto of 4 November 1905, and it was announced that a constitutional provision would be drafted to guarantee fundamental political rights. The 1867 Press Ordinance, and in particular the changes made to it in 1891, otherwise remained in force. Conflicts between authorities and journalists continued to be unavoidable.

With respect to the period of autonomy it may be noted, in summary, that the Russian Tsars attempted, with the help of censorship, to uphold domestic security and maintain social calm. There was a conflict situation between rule by the Russian Tsar on the one hand, and liberal-minded Finns who kept presenting press freedom motions on the other.

According to Governor-General Heiden and Tsar Alexander III, the Finnish press had been too active and critical during the 1890s, so press legislation was tightened and powers consolidated with the Gover-
nor-General, who had promoted Russia’s interests and been given virtually dictatorial powers. Finns saw freedom of expression and of the press as maintainers of the social calm. As the literate part of the population grew, freedom of expression came to be regarded as an important and desirable value. It began to be seen as a constitutional-like right to freedom, which should be enshrined at the constitutional level so that it could not be watered down by means of an ordinary law or regulations at a lower level. In the end, however, the 1867 Press Ordinance for Finland was only repealed once the country had become independent.

Strictly-applied censorship led to an interruption in the period of growth of the Finnish press, and the number of newspapers fell in 1901 and 1902 since it was not possible to compensate for suspended papers by founding new ones. The 1890s press largely served local interests. The difficulty for the editors during the years of oppression was that a change in the political situation required written opinions, while the censors tried to stop these. The Finnish press began to show greater political engagement only after the liberation and abolition of pre-censorship that followed the general strike.

The 1906 constitutional reform

In the November Manifesto of 4 November 1905, the Tsar decreed that a proposal be drafted ‘for constitutional enactments that guarantee the country’s citizens freedom of the word and of assembly and association’. The Senate was furthermore to draft a proposal for a press freedom act, and immediately issue a proclamation about discontinuing preventive censorship.

The Drafting Committee proposal for a manifesto about general civil rights was completed in two months. The principles of freedom of expression, of assembly and of association were derived from the inviolability of personal liberty. Constitutional protection was regarded as important, so that it would not be possible to impose provisions limiting fundamental rights and freedoms by means of legislation, much less by administrative regulations. Thus the ambition was to elevate freedom of expression so that it would be protected at the constitutional level.

Tsar Nicholas II ratified the law on freedom of expression, assembly and association on 20 August 1906. Its provision on freedom of expression read:

All Finnish citizens possess the freedom of the word, as well as the right to publish in print written or pictorial representations, for which no obstacle may be laid in advance.
All Finnish citizens possess the right to assemble, without prior permission, for deliberation of general concerns or other lawful purpose, and to form associations for the fulfilment of ends which are not in contravention of the law or of good morals.

Enactments regarding what should be observed in the exercise of these rights shall be issued in accordance with the procedure for instituting general law. The Drafting Committee drafted a press freedom act and assembly and association acts to supplement the fundamental law. The proposal for a press freedom act was finished before the constitutional provision since there was a previous draft available. Pohjolainen has also noted that when the Committee drafted the constitutional provision on freedom of expression, its members already knew what was actually intended by it in the Freedom of the Press Act, which was to be instituted separately. The intention of the Freedom of the Press Act was to create mechanisms for intervention retrospectively, which would replace the permit and pre-censorship systems.

The fundamental law was adopted, but the proposal for a Freedom of the Press Act became bogged down in differences between the estates at the 1905–1906 Diet. When the estates were finally ready to ratify the Act, it was no longer approved in Russia. This caused problems since the provision in the fundamental law expressed the principle of freedom of expression and forbade pre-censorship, but the only statute that concretely referred to freedom of expression was the 1867 Press Ordinance – which conflicted partly with the constitutional provision and was based on a censorship system. New motions for a Freedom of the Press Act were presented in 1911 and 1912, but there was not enough time to consider them during the Diets. Judicial regulation of press freedom thus remained unclear right up until the entry into force of the 1919 Freedom of the Press Act. The situation was furthermore exacerbated by wartime censorship, which was brought in as a result of the WWI breaking out in August 1914.

In the aftermath of the general strike, a reform of the Instrument of Government was also in the works. The principal purpose of the Instrument of Government was to regulate the exercise of the supreme power in the country, but there was also a wish to include rules regarding citizens’ fundamental rights, in the same way as in other modern constitutions. Consequently, the freedom of expression provision at the constitutional level quickly became the subject of renewed scrutiny. The first proposal for a new Instrument of Government was completed in 1907, but was stopped by the Governor-General.
The Instrument of Government and Freedom of the Press Act of 1919

The Tsar was overthrown in the March Revolution of 1917. With the end of imperial power, the National Press Board in Finland and its bureaucratic machinery, along with the institution of the print ombudsman were dismantled. K J Ståhlberg was appointed to lead the committee tasked with drafting the revision of the Instrument of Government, subsequently named the Committee on the Constitution. As the basis for its work on fundamental rights and freedoms, the Committee used the proposal for the Instrument of Government that the Senate Committee, under Mechelin’s leadership, had drawn up in 1907. The factual content of the provision on freedom of expression was based on the old proposal, even if the wording was changed somewhat. Section 10 of the 1919 Instrument of Government, on freedom of expression, was subsequently given the following wording:

All Finnish citizens possess the freedom of the word, as well as the right to publish in print written or pictorial representations, for which no obstacle may be laid in advance, as well as the right to assemble, without prior permission, for deliberation of general concerns or other lawful purpose, and to form associations for the fulfilment of ends which are not in contravention of the law or of good morals.

Enactments regarding the exercise of these rights shall be issued in law.

As is clear, the main considerations within freedom of expression here were press freedom and a proscription against pre-censorship. The Freedom of the Press Act was published in the statute book on 14 January 1919. Under Section 19, Item 1 of the Act, periodical print publications must identify a person who ‘in the capacity of main editor monitors publishing of the publication and determines its content’. The provision was an attempt to ensure that the authorities would know in advance who the person responsible for publication content was. Under Item 2 of the same section, several individuals could be nominated only if the notification specified which part of the publication each one of them was in charge of.

If the primary editor was ‘temporarily’ prevented from fulfilling his/her undertaking, the publisher assumed his/her responsibility under Section 20 of the act, unless notification concerning deputies referred to above had been made. Section 21 specified that only a person of lawful age could be the primary editor of a periodical print publication. Under Section 22, the primary editor’s name must be printed on each issue of a periodical print
publication. If no such information appeared, the primary editor was to be fined. However, the primary editor could also be sanctioned as perpetrator or accomplice provided he/she was the perpetrator under the general doctrine of the Criminal Code (Section 31).

The primary editor’s task was to monitor that no criminal material appeared in the paper. If the primary editor was not going to be sentenced for crimes committed through the content of the print publication, Section 32 of the Act made it possible to sentence him/her for causing abuse of the freedom of the press. This provision also stated that if the primary editor was not subject to liability as perpetrator or accessory for crimes committed through the content of a periodic print publication, he/she should be sentenced to fines or prison for a maximum of one year for abuse of press freedom, unless he/she could prove that he/she had observed all due necessary diligence to prevent the crime.

The model for this provision on the primary editor’s liability was the Austrian Press Act.115 When the Freedom of the Press Act was drafted, it was realised that the publication of thoughts does not in itself jeopardise the law. Thus such publication does not require permission from state authorities. By means of a free press, new thoughts and ideas could ‘exercise their stimulating effect on developments’. It was also believed that ‘a free and public discussion improves the public spirit’.116 Still, the state could only recognise and protect freedom of expression if this freedom kept itself within the limits specified by the law. It was further noted that a criminal statement in a print publication would have ‘considerably greater range than the spoken word and can therefore cause a far more ruinous effect’.117 Because of this and of the abolition of pre-censorship, it was necessary to find a way by which a person who had participated in the publishing of a criminal publication could be held liable.

There was a very vigorous debate about the press freedom proposal in Parliament. Some of the members thought the sanctions too severe, and warned of instituting a ‘print crime law’, or regarded the law as a ‘distorted picture of press freedom’.118 Santeri Alkio, member for the Agrarian League (Agrarförbundet), sagely pointed out that members should not only be looking at the situation they were in now, but should raise their gaze towards the future.119

Finally it was decided that an arrangement in which the principal rule was normal criminal liability for the offender best corresponded to a sense of justice. In order to supplement this, Section 32 specified the liability of the primary editor, which was also expressed as ‘liability for disregard of obligations’.120 The provision criminalised neglect of the supervisory obligation. If a periodical print publication contained a defamatory text, for
example, the primary editor would not be sentenced for defamation under the above-mentioned provision, but for causing abuse of press freedom, which was sanctioned more leniently. If the primary editor had nevertheless participated in the publishing of a criminal text, so that he/she could be regarded as offender or accomplice or instigator, he/she was to be sentenced in accordance with the necessary conditions in the Criminal Code as offender, instigator or accomplice in the main offence. The legislative history of the provision highlighted the importance of ‘at least one person not being sentenced for an act which cannot be attributed to him on general criminal justice grounds’.121

Thus, under Section 32 of the Freedom of the Press Act, the primary editor would only be sentenced for causing the abuse of press freedom and not for the crime that the author of the criminal newspaper article may have been guilty of.

The primary editor’s supervisory liability on pain of sanctions under Section 32 of the Freedom of the Press Act was very stringent. He could be sentenced for causing the abuse of press freedom even if he had not read the offending article beforehand. This liability was underlined by the prescription that the primary editor – in contrast to defendants in criminal cases in general – must show that he had ‘observed all due diligence’.122

The provision was based on the idea that all the material in the paper is to be vetted by the primary editor. Newspapers were small, and this was not an onerous job. The relatively low threshold of liability was also justified by the paper’s right to publish anonymous texts without revealing the author.

A similar provision was also included in the Radio Responsibility Act (219/1971), instituted on 12 March 1971. Section 1 laid down that liability for an act whose criminality is based on the content of a programme broadcast via radio lies with the person who, under the Criminal Code, is to be regarded as offender or accessory to the crime. Section 2 enjoined radio broadcasters to appoint a programme editor responsible for each programme to be broadcast, with the task of ‘monitoring the programme and preventing the broadcasting of programmes whose content is criminal’. The provision further stated that no programme may be broadcast against the will of the programme editor responsible.

Section 3 of the Radio Responsibility Act included a provision which corresponded to the Freedom of the Press Act, on the secondary liability of the programme editor responsible. Even if the programme editor responsible was not liable as offender for a crime based on the content of a broadcast programme, he/she was nevertheless to be sentenced for neglectful supervision, unless it could be proved that he/she had observed all due diligence in order to prevent the offence. Section 4 prescribed that
radio broadcasters, in addition to the person who committed the crime, any accomplice and the programme editor responsible who had neglected his/her supervisory duty, were liable to pay compensation for any injury caused by the broadcasting of a programme with criminal content.

Today it is not possible for the primary editor to read all the material published in a printed paper or in the online edition beforehand; instead the primary editor’s tasks focus on providing guidance and guidelines, and delegating the supervisory responsibility in an appropriate manner. The stringent supervisory responsibility under the Freedom of the Press Act has also been replaced by the less stringent responsibility under the Freedom of Expression Act.\(^{123}\)

**Constitutional reform and the Constitution’s provision on freedom of expression**

The Committee for Fundamental Rights and Freedoms was appointed in 1989 to draft legislation which would guarantee fundamental rights and freedoms to everyone under Finnish jurisdiction. It would also more clearly define and broaden the Constitution’s provisions on fundamental freedoms in accordance with current conventions on human rights and would contain provisions on the most important economic, social and cultural rights and freedoms. The aim was for fundamental rights and freedoms to be applicable, to the greatest extent possible, in the courts. Moreover, current conventions on human rights were to be given a more prominent position.\(^{124}\)

The provisions in the revised Instrument of Government on fundamental rights and freedoms came into force on 1 August 1995. The constitutional reform modernised and clarified the system in respect of fundamental rights and freedoms, expanded its area of application to include more individuals, added several new fundamental rights and freedoms to those enjoying protection, and strengthened the direct application of fundamental rights and freedoms. The constitutional provisions were transferred, without any changes to the contents of the rights, from the Instrument of Government to Chapter II of the Constitution by means of a constitutional amendment which came into effect on 1 March 2000.

In principle, fundamental rights accrue to people only. From the legislative history regarding freedom of expression, however, the conclusion can be drawn that constitutional protection also includes companies, associations and other legal entities who practice freedom of expression. This can be defended by reference to the observation in the legislative history that the core purpose of the provision on freedom of expression is to guaran-
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tee the formation of opinions that constitutes the bedrock of a democratic society, free public debate, the free development of mass media, pluralism and opportunities for public criticism.\textsuperscript{125} According to Government bill 309/1993, the provision also protects commercial communication and ‘provides protection e.g. against interventions by public authorities in the editorial decisions of the press even before a message has really been expressed or published’.\textsuperscript{126}

Freedom of expression and the right of public access are regulated in Section 12 of the Finnish Constitution, which reads:

Section 12. Everyone has freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public, unless their publication has, for compelling reasons, been specifically restricted by an Act. Everyone has the right of access to official documents and recordings.

Freedom of expression is not associated with any particular form of communication, so the area of application for the provision is technology-neutral.\textsuperscript{127} Freedom of expression guarantees the right to communicate information, opinions and other messages for the person conveying it as well as the right of people to receive it. Even if freedom of expression is a right that accrues to individuals, it also promotes the common good, i.e. democracy and the pluralistic debate associated with it.\textsuperscript{128}

In the most basic sense, freedom of expression can be regarded as a fundamental political right whose ‘core purpose is to guarantee the formation of opinions that constitutes the bedrock of a democratic society, free public debate, the free development of the mass media, pluralism and opportunities for public criticism of the exercise of power’.\textsuperscript{129} Freedom of expression thus has both a discursive task and a supervisory task vis-à-vis the exercise of power. In both cases, freedom of expression is regarded as an essential part of democratic decision-making and legislative procedure.\textsuperscript{130} In this view – that freedom of expression expressly safeguards public debate and representative democracy – the instrumental value of freedom of expression comes to the fore.\textsuperscript{131}

Aside from the role of freedom of expression in upholding democracy, it is also important because, with its help, people can realise and express themselves and maintain relationships with other people. The European
Court of Human Rights has also noted that freedom of expression constitutes an essential basis for a democratic society and a prerequisite of social development as well as of each individual’s opportunities for self-realisation. Freedom of expression does not only serve as a tool for truth-promotion for democratic or other ends, but is valuable in itself. Freedom of expression also enjoys considerable significance as a promoter of social and scientific development. Freedom of expression has very considerable significance for entertainment, considering the extent to which people use various social media services and consume media content in printed newspapers, web publications, TV and radio, and on the Internet.

Freedom of expression also covers various forms of creative activities, self-expression and commercial communication. However advertising, for example, may be restricted to a greater extent than is possible in the core area of freedom of expression. The same applies to the disclosure of private affairs purely for the purpose of entertainment. Thus the scope of the area of application of the provision on freedom of expression does not imply that all messages are equally protected, irrespective of their content and purpose; instead content-neutral freedom of expression means that no message, in principle, is beyond the provision’s area of application. Even if the constitutional provision does not differentiate between political, scientific, religious, artistic or commercial messages in terms of the area of application, the intent and content of a message can, in a concrete interpretation situation, be significant for the assessment of the extent of freedom of expression, and grounds for limiting it.

The degree of protection enjoyed by freedom of expression is influenced, aside from by the subject or nature of the message (political publication, advertising etc.), also by whether freedom of expression is actually limiting any other fundamental or human right e.g. the protection of privacy.

In Finland, freedom of expression has traditionally been a typically classical freedom, at whose core has been a proscription against the state authorities’ prior scrutiny or pre-censorship, and which has provided protection primarily against the state and its institutions. Still, the constitutional provision safeguards freedom of expression without anyone preventing its exercise in advance. In other words, the provision also imposes on the state the obligation to safeguard freedom of expression in relation to actors other than state authorities.

The Constitution’s provision on freedom of expression does not preclude retrospective interventions in the event of (incorrect) exercise of freedom of expression, e.g. with reference to penal law or law of damage. By means of the Freedom of Expression Act, regulations have once again been issued e.g. on the appointment of a primary editor and on publication
of corrections and replies. However, the status of freedom of expression as a fundamental right also limits measures that can be taken retrospectively. For example, far-reaching and generally-conceived criminalisation may be problematic for the provision on freedom of expression.\textsuperscript{140} Extensive tort liability arising on unclear grounds may also be problematic in view of freedom of expression. However, in Finland damages for suffering have been linked very closely to the criminal responsibility of the act, and even the compensability for damage caused to property is associated with additional conditions compared to ordinary culpability.\textsuperscript{141}

On the other hand, it should be noted that it is in fact assumed that the state will actively undertake measures to protect privacy, honour and the sanctity of the home as specified in Section 10 of the Constitution and Article 8 in the European Convention, which may mean that the exercise of freedom of expression becomes criminalised, or possible tort liability. However, criminal and tort sanctions must be coordinated with freedom of expression.\textsuperscript{142} The position of freedom of expression as a fundamental right must also be taken into account when considering the damages to be awarded for violation of honour or privacy, and attention paid to whether the tort liability has any obstructive effect on the free communication of information and on public debate.\textsuperscript{143} These retrospective monitoring norms, and their application, concretise the content of material freedom of expression.

### The 2004 Freedom of Expression Act

**Drafting the Freedom of Expression Act**

In the 1990s, the Freedom of the Press Act (1919) began to feel antiquated and inadequate, with unnecessary provisions.\textsuperscript{144} On 24 August 1995, the Ministry of Justice appointed a Commission (the Freedom of Expression Commission) to draft a proposal for legislation to replace the Freedom of the Press Act. The Commission submitted an interim report to the Ministry on 12 February 1996 (KB 1996:2). At this point the assumption was still that the task did not cover the entire communication field, but primarily the issues crucial to freedom of expression which had been part of the Act’s area of regulation.\textsuperscript{145} A large number of consultation bodies were interviewed.\textsuperscript{146}

In the Commission’s view, the penal liability system which had been regulated by means of the Freedom of the Press Act was ambiguous and did not in all respects correspond to requirements necessary for general
penal law doctrine. The liability system could also be criticised with reference to freedom of expression. The system of supervision of printed communication was considered unreasonably demanding. The regulations on confiscating print products and on coercive measures also needed revision. And there was also reason to review the legislation on the right of reply and correction.\textsuperscript{147}

The Freedom of Expression Commission submitted its final report on 18 February 1997 (KB 1997:3). It proposed that the provisions on freedom of expression in mass communication be grouped into a single law. This law would apply to all domestic publishing and broadcasting activity, regardless of the technology used to record, publish and/or distribute the message.\textsuperscript{148}

In July 2000, a group of officials at the Ministry of Justice Legislative Drafting Department was tasked with continuing to draft the bill, drawing up a proposal for an act on freedom of expression in mass communication. An unpublished draft of a Government bill to lay before the Parliament, with a proposal for an act on the exercise of freedom of expression in mass communication as well as for certain other laws linked to this, was completed on 14 June 2001. In the autumn of 2001 a total of 27 referral opinions were presented in reference to it.\textsuperscript{149} Drafting continued at the Ministry, and the Government bill with a proposal for an act on the exercise of freedom of expression in mass communication as well as for certain other laws linked to this (54/2002), was submitted to Parliament on 14 April 2002. The Parliamentary Committee on the Constitution delivered its opinion (14/2002) on the Government bill, and it was subsequently passed on 5 June 2003, with the changes proposed by the Committee on the Constitution, entering into force on 1 January 2004. The Freedom of Expression Act was to apply to all mass communication, and when it entered into force the earlier Freedom of the Press Act was repealed, as was the Radio Responsibility Act which had regulated television and radio operations.

The Freedom of the Press Act’s area of application and principal features

The Freedom of the Press Act does not define what forbidden expression is. Provisions on crimes based on the content of a published message can be found primarily in the Criminal Code (39/1889). Restrictions on showing and distribution based on the content of a message are also found in the Act on Pictorial Programmes (710/2011). Additionally, the Consumer Protection Act (38/1978), for example, contains provisions on advertising and marketing which are backed up by the imposition of fines, and the Copy-
right Act (404/1961) also contains restrictions on freedom of expression in its limits on copying and distribution of copyright-protected works.

Crimes regulated in the Criminal Code and other laws that concern freedom of expression and are based on the content of a published message may be called expression crimes. With certain exceptions, these crimes can also be committed in ways other than through mass media. Among the exceptions, it may be noted that the dissemination of information that violates privacy (Criminal Code 24:8-8a) assumes that the information was spread via a mass medium or was in some other way made available to a large number of people. Under Item 1 of the provision for crimes against freedom of belief (Criminal Code 17:10), the necessary condition is public blasphemy, defamation or insult. Agitation against an ethnic group (incitement to racial hatred) (Criminal Code 11:10-10a) assumes the message is made available to the general public, spread among the general public or is provided for the general public.

Under Section 1, Item 1 of the Freedom of Expression Act, more detailed provisions on how constitutionally-guaranteed freedom of expression is exercised in mass media are issued. This Act regulates the obligations of publishers and those who carry out broadcasting activities, the right to reply and to correction, the responsibility for the content of a published message, coercive measures, sanctions and competent courts. Under Section 1, item 2 of the Freedom of Expression Act, when the act is applied, no greater infringement of the media may be made than is necessary with regard to the importance of freedom of expression in a democratic state governed by law.

The Freedom of Expression Act applies to publishing and broadcasting activities carried out in Finland. The same criteria hold for material published online as for printed material: the publication must have a sufficiently strong connection with Finland in order for the Freedom of Expression Act to be applicable. When a private individual has a home page in an electronic communication network, the Freedom of Expression Act only partially applies. At the time the act was drafted, ‘home page’ was defined as a page in an open communication network. The provision is applicable to blogs, online publications and other web pages managed by individuals and open to all. It was not regarded as appropriate to direct equally onerous regulation at private individuals’ activities as was directed at online publications maintained by companies and other organisations that pursue professional mass media operations. It was only regarded as necessary for penal and tort liability to be realised, and that further distribution of clearly unlawful material could be prevented. With respect to activities concerned only with technical production, broadcasting, conveying or distribution of a publica-
tion or an online message, only the Act’s provisions on coercive measures are applied, which include omission of an online message’s identification data (Section 17), orders to interrupt distribution of an online message (Section 18), confiscation of publications (Section 20) and forfeiture sanctions and orders to destroy an online message (Section 22).

Section 4 of the Freedom of Expression Act lays down the obligation to appoint a responsible editor (editor in chief), as well as the tasks of this individual. A responsible editor must be at least fifteen years of age and may not have been declared bankrupt or suffer from limited legal capacity. The responsible editor is to lead and monitor journalistic work, decide on the content of the periodical publication, the online publication or programme, as well as manage other tasks prescribed in the Freedom of Expression Act.

The obligation to appoint a responsible editor applies for periodical publications, online publications and programmes. The provision on appointing a responsible editor does not apply to net publications run by individuals, nor for companies’ websites, discussion forums, blogs or private individuals’ home pages. For periodical publications and online publications, several responsible editors may be appointed, each of whom is responsible for the part of the paper or online publication allocated to him or her.

Freedom of expression and the media landscape in Finland today

Initially, freedom of expression was understood mainly in terms of press circumstances and the permitted content of print products. Freedom of expression was also regarded as an issue related to freedom of trade and property protection for associated business activities. As early as in the 1920s, however, freedom of expression began to be considered in connection with films and later, in the 1960s, in connection with broadcast radio. The Finnish media landscape has since evolved so that in 2014, print publishing activities represented 59 per cent of Finnish media, electronic media represented 36 per cent and recording media 5 per cent.

Today’s media market offers people an enormous breadth of choice. Growing use of smartphones and tablets, together with the enormous variety of publication platforms, have made the consumption of content in newspapers and on TV independent of time and place – as the same content can be read and seen on different devices. At the same time, both the amount of time spent on media and the sums of money that households
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devote to communication have increased. Still, typical Finnish media use remains focused on a large number of newspapers and periodicals with considerable circulation and good accessibility in relation to population numbers, as well as on the strong position of public service broadcast radio. The Finnish tradition of reading is underpinned by high literacy rates and the education system, as well as the VAT exemption for printed papers that was in force until 2012.

Alongside traditional print and deadline journalism, web and online journalism has emerged in which information is updated in real time and where the general public and readers can take part in content production by sending in photographs, video clips and tips. Citizens’ communication opportunities have also improved thanks to smartphones, tablets and portable computers and online discussion forums, blogs and other media services. This increased competition between different forms of communication and media has influenced journalistic content and the manner in which it is edited.

The enormous quantity of communication and the ease with which it can be accessed still do not guarantee that people receive as much information as possible. Rather, research into journalism suggests that as a result of media concentration, electronic media and the press frequently offer uniform interpretations. People furthermore have the habit of seeking out like-minded discussion company on the Internet, which would seem to undermine the idea that people will absorb new ideas. This ‘social bubble’ is moreover reinforced by the fact that the news flow is often filtered through social media services, where the algorithms defined by the provider serve up such information and discussion partners as we are assumed to like. Besides being criticised for its financially-based concentration of power, the Finnish freedom of expression culture has also been accused of ‘intellectual narrowness and unanimity’ and of seeking culture consensus.

Another problem related to information access is the profiling that providers of web services apply, meaning that some information is offered and some not. The large corporations that dominate the Internet, such as Google, decide on the basis of their own business policies what search results or ads are shown to whom. In Finland today, the Finnish state and the machinery of officialdom are hardly perceived as a major threat to freedom of expression or privacy. Private business enterprises, in fact, present a bigger threat as they collect, refine and use data they get from users in connection with our use of various tools and web services.

The significance of communication and the media has increased not just for leisure consumption, but also as a factor that affects the activities
of public institutions. Indeed, reference is often made today to the ‘media society’ and to ‘mediafication’ in describing how public institutions and the media are becoming increasingly interwoven.¹⁶³

New communications technology and the growing use of the Internet have brought new issues of communication law interpretation. These include the collection and use of personal data – for e.g. profiling and marketing purposes – as well as companies’ information security and data protection obligations, liability for the providers of online forums, identity theft and the freedom of expression of employees and officials.

The capacity of national legislation to regulate and monitor media activity, and individuals’ activities as content producers and sharers, has been weakened since a large proportion of the content consumed nationally is produced or shared outside Finland and the EU, as a result of digitisation and increasing Internet use. Nor has any comprehensive international system emerged to replace weakened national regulatory power.¹⁶⁴ Information and messages that move globally across national borders imply their own challenges for legislation and interpretation. When the legal basis becomes internationalised and judicial issues straddle several different areas of jurisprudence, communication law specialists need to possess a broad view and versatile professional skills.

With regard to the structural regulation of communications, rules are essential for example for public service broadcast radio, programme concessions due to limited frequencies, the competition perspectives and consumer protection. For example it is essential to prevent unreasonable contract terms for business activities involving broadband and telephone connections.¹⁶⁵ The ambition is also to safeguard the structural pluralism of the media field. One way to do this is with regulations to prevent the concentration of ownership of companies that influence communication and its consumption, or to limit the effects of such concentration.¹⁶⁶

The Information Society Code (917/2014), which came into force at the beginning of 2015, brings together regulation that was previously spread across eight different acts. The Information Society Code contains stipulations on the provision of electronic communication services, the provision of communication networks and communication services, and on the granting of radio and TV concessions. The objective of the Code is, according to Section 1, to secure the efficient and interference-free use of radio frequencies and to foster competition. The Code also attempts to ensure that communications networks and services are technologically advanced, of high quality, reliable, safe and inexpensive. The Code also aims to ensure the confidentiality of electronic communication and the protection of privacy.
Current freedom of expression legislation strives to be technology-neutral so that the rules on breaches of freedom of expression are applied in the same manner to content published in all types of communication media. Confidentiality of sources, for example, applies under Section 16 of the Freedom of Expression Act for originator, publisher and broadcaster when a message has been made available to the public. You do not need to be a journalist or any other type of communications professional to claim source confidentiality; instead every person is entitled, even people writing posts in a discussion forum on the Internet. Tort liability has been extended in the Freedom of Expression Act to also include – in the case of periodical publications, net publications and programmes – content produced by content producers who are not employed in any way by the publisher. In many cases, this liability is extended due to participation, even without reference to the statutory provision on extended liability.

The obligation to appoint a responsible editor-in-chief only applies for periodical publications, net publications and programmes. In practice, however, this editor-in-chief rule regarding responsibility for leadership and supervision has almost become a dead letter. Only four individuals were sentenced for this crime between 2004, when the act entered into force, and 2014. On the other hand, the editor-in-chief has often been made the de facto offender due to the decision to publish an unlawful text or image.

Now that the Freedom of Expression Act has been in force for just over a decade, it may be noted that it has stood the test of time fairly well – even if the definition of a net publication would benefit from an update. No problems have emerged with regard to the confidentiality of sources, even if this does not affect journalists alone. Requests for corrections and for a reply have never featured in a court of law. This is probably because the self-regulating system of the press, with its journalism rules and the Opinion Board for decision-making practices in mass media, works quickly and effectively, and because the guidelines have been perceived as fair.

Since the European Court of Human Rights’ delivery of 18 judgments in which it has found that Finland has violated freedom of expression, legal practice in Finland has taken a turn towards greater indulgence of freedom of expression. The European Court’s decisions also contributed to an extension of the Criminal Code provisions on protection of honour and privacy, with trade-off regulations that limit the area of application for culpability and with a review of the penalty levels for baseline criminal acts.

The greatest threat to Finnish freedom of expression would not seem to be coming from the authorities but from aggressive and sometimes downright hateful online discussions in which citizens, experts and journalists
are attacked with insults and threats. Such public exposure can be very random and unfair. A person who has been subjected to it may not be willing to continue sharing their knowledge and opinions with the public, even if the general public is interested in his/her views and they might contribute valuable knowledge on some subject of discussion with a broad significance. In this way, an extensive freedom of expression partly counteracts itself. However, there are not very many ways to improve this situation, as police resources are focused on crimes regarded as more serious, and as the real offender cannot be pinpointed despite analysis of the IP address and the transmitting computer. It remains to be seen how the digital footprints that appear on the Internet partly of our own doing, but also independently of our own will, can influence our identities.
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Notes

1 The Swedish era in Finland’s history is regarded as having begun around 1150, but opinions differ about this date. Clear historical evidence of established Swedish rule in Finland only exists from 1249, when the second crusade to Finland was undertaken.
2 Re the latter, see Harrinkari 2005 p. 33.
3 See e.g. Westerlund 2004 pp. 15–17.
4 Attempts were made in particular to influence left wing newspapers’ activities by means of press freedom actions, see Neuvonen 2012 p. 112.
5 The legislation that was in force 14 April 1934–31 December 1936, and which was also known as the Sedition Act, forbade violations of religious values and moral principles, and desecrations of national monuments, and statements that could harm Finland’s relations with foreign states were criminalised; see Ekholm, http://www.sananvapausjasensuuriverkkoaiakana.com/kielletytkirjat/kielletyt3.html, retrieved 4 Mar 2016. According to Pohjolainen, the target of the restrictions to freedom of expression imposed in connection with the power of attorney laws instituted on Finland in the 1930s was initially the political left, and later also the extreme right (Pohjolainen 1975 pp. 28–31 and Pohjolainen 1994 p. 218). On the political trials and the freedom of expression crimes considered by them, see Björne 1977, in particular pp. 194–252.
8 Finnish differentiates between ‘ilmaisuvapaus’, which has often been understood as the individual person’s right express their opinion and send messages, while the term ‘sananvapaus’ has been given a broader meaning so that it includes a free information system, the right to send and receive messages in various ways, and the right to participate in the public debate (Kulla 2002 p. 450). Both expressions are translated as ‘freedom of expression’ (yttrandefrihet in Swedish).
9 See Manninen 1990 pp. 406–434. Freedom of expression has generally been restricted during emergency situations, and once those in power have consolidated their position, freedom of expression has again been extended (see Backman 1975 pp. 128–129 and Pohjolainen 1994 p. 214 and 220).
11 Manninen 2015 p. 15 and 25–26. The publishing of parliamentary documents was based on a regulation issued by the estates in 1731, but which was never really implemented in practice (ibid p. 27).
12 Manninen 2015 p. 15.
13 Manninen 2015 p. 16.
14 Nokkala 2012 p. 33 and Nordenstreng 2015 p. 9. Forsskål’s most famous work is Tankar om borgerliga friheten (Thoughts on civil liberty, 1759). It was confiscated as soon as it was published. Re Forsskål see Nokkala 2012, Nokkala 2015 and Manninen 2015 p. 27. Re Chydenius’ influence also Nordin 2015 p. 24.
15 Nokkala 2012 p. 34, who refers to the work Karonen, Pohjoinen suurvalta, pp. 358–365. On this see also Neuvonen 2012 p. 88.
16 Manninen 2015 pp. 15–17. See also Konstari 1977 pp. 28–33.
17 Manninen 2015 p. 29.
Summary Manninen 2015 pp. 30–31, for more details see the Act’s Sections 1–3.


Leino-Kaukiainen 2015 p. 46.


Tommila 1989 p. 61.

Leino-Kaukiainen 2015 p. 47. Re the period see also Neuvonen 2012 pp. 89–90.


Pulkkinen 2003.


Leino-Kaukiainen 2015 p. 49.

Leino-Kaukiainen 2015 p. 49.


Pulkkinen 2003.


Nurmio 1947 pp. 325–327, Tommila 1988 pp. 167–171 and Leino-Kaukiainen 2015 p. 49. See also Nurmio 1947 pp. 313–328. Suometar was the first real Finnish-language newspaper. Paavo Tikkanen, Ph D, was the key figure behind it, who also influenced the development of the Finnish language to a great extent. See Vesikansa 2007.


Leino-Kaukiainen 2015 p. 50.

Vesikansa 2007 p. 2.


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57 Leino-Kaukiainen 2015 p. 54.
59 Harrinkari 2005 p. 27.
60 Leino-Kaukiainen 2015 p. 55.
61 Viljanen 1986 p. 131.
62 Harrinkari 2005 p. 27.
63 Leino-Kaukiainen 1984 pp. 48–51 and 155–156. For example, the Kuopio newspaper Savo was closed down in 1891 due to anti-government texts, but the paper’s responsible editor, A B Mäkelä, had already applied to the National Press Board to found a new paper even before he received the official notice of closure (ibid p. 156).
65 Leino-Kaukiainen 2015 p. 57.
66 Leino-Kaukiainen 2015 p. 57. See also Viljanen 1986, according to whom no publishing permits were turned down 1868–1898, but the situation changed during the first period of oppression 1899–1905, when 78 of 148 applications for publishing permits were turned down.
73 Viljanen 1986 p. 132.
74 Leino-Kaukiainen 1984 p. 57.
76 Leino-Kaukiainen 2015 p. 63.
81 Viljanen 1986 p. 135.
86 Viljanen 1986 p. 133. Using the right to petition was the only possibility, since the estates until the Diet Procedure of 1906 had no right to bring motions in matters related to the Freedom of the Press Act. This Act, the fundamental laws and laws concerning the defence of the realm were expressly excluded from the estates’ right to bring motions when the 1886 change to the Diet Procedure gave the estates the right to bring motions in other matters.
Päivi Korpisaari

91 Leino-Kaukiainen 1996 p. 150.
95 Re the latter see Leino-Kaukiainen 1984 p. 315.
97 Viljanen 1986 p. 144.
98 The Tsar issued the manifesto on 4 November 1905, and the Drafting Committee (Karl Söderholm, Axel Charpentier and Filip Grönvall) proposal was completed on 20 February 1906; see Viljanen 1986 pp. 144–145.
100 Viljanen 1986 p. 156.
101 The original Finnish quote is from the work Pohjolainen 2015 p. 74.
102 Pohjolainen 2015 p. 74.
103 Viljanen 1986 p. 159.
104 Pohjolainen 2015 p. 75.
105 Harrinkari 2005 p. 31.
106 Harrinkari 2005 p. 31.
107 Pohjolainen 1996 pp. 160–161. According to Viljanen (1986 p. 145) mistrust of the estates’ representation was the reason for wanting to secure civil rights in a separate fundamental law. Securing political rights was felt to be an urgent measure that the estates could still undertake, while the wish was for the Instrument of Government to be adopted by a Parliament appointed on the basis of universal and equal suffrage.
109 Pohjolainen 2015 p. 76.
113 Information about the Freedom of the Press Act has been taken from my licentiate thesis (Tiilikka 2000).
114 Vuortama ja Kerosuo (1994 p. 27) notes that this was regulation with no intention of directly influencing the newspaper’s internal decision-making. Indirectly, however, the section establishes the primary editor’s central position in the newspaper, and since the purpose of the law is to hold the right people liable, the primary editor should have a position from which he or she in practice is able to monitor the publication’s compliance.
115 The Drafting Committee proposal for a Freedom of the Press Act, including grounds 1906 pp. 44–45 and 64.
116 The Drafting Committee proposal for a Freedom of the Press Act, including grounds 1906 pp. 50–51.
117 The Drafting Committee proposal for a Freedom of the Press Act, including grounds 1906 p. 51. See also the Drafting Committee proposal for a manifesto regarding certain rights accruing to Finnish citizens, including grounds 1906 pp. 13–17.
118 Parliamentary records of 6 and 7 December 1918.
119 Parliamentary records of 6 December 1918 p. 159.
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120 The Drafting Committee proposal for a Freedom of the Press Act, including grounds 1906 pp. 63–64. The later RP 32/1917, which led to the institution of the Freedom of the Press Act, was based on the 1906 proposal.

121 The Drafting Committee proposal for a Freedom of the Press Act, including grounds 1906 p. 64.


123 Re freedom of expression in Finland during the 1960s and 70s, see Pere 2015, in particular pp. 345–372. According to Pere (p. 350 in the work mentioned) the traditional limits of freedom of expression were challenged from various directions in the new social and cultural climate. Mass communication was used both to support and to topple the hegemony. The time was also characterised by the sensationalist press maintaining a balancing act between the consequences of exaggerations and the financial gain they brought, and by the fact that financial interests determined the boundaries drawn for commercial communication (p. 351 in the above-mentioned work).

124 KB 1992:3 p. 2 and 11. This section is based on my doctoral thesis (Tiilikka 2007).

125 RP 309/1993 p. 56.

126 RP 309/1993 pp. 56–57. Since the European Convention guarantees ‘minimum protection’ that the state party must at least provide to those covered by its jurisdiction, the question of the constitutional protection of the publisher’s freedom of expression is significant primarily in situations where national legislation protects freedom of expression for the subject of the constitutional right more than that assumed by the European Convention.


133 More on this in Nicol – Millar – Sharland 2001 pp. 3–4. Re the tasks of freedom of expression, see also Petäjä 2006.


138 See e.g. HD 2005:82.

139 KB 1973:1 p. 113. See also GrUU 19/1998 pp. 2–3 and TrUB 6/1998 (the concession system for radio and television activities).

140 RP 309/1993 p. 57. See also KB 1992:3 pp. 252–253. The coordination of freedom of expression and privacy protection was assessed e.g. when the criminalisation of disseminating information that violates privacy was drafted, see GrUU 36/1998 p. 3.


142 KB 2001:11 pp. 95–98 and RP 167/2003 p. 22. In the case I v Finland, which concerned suspected ‘snooping’ in patient data, (17 July 2008) the European Court found that the processing of data about a person’s private life belonged to the area of application for Article 8.1 of the European Convention, and that
the protection of private and family life guaranteed in the article could imply an obligation for the state to undertake measures to protect a person's privacy even when it was a matter of relations between private individuals. In the case in question, a male nurse who was working at a hospital suspected that his colleagues had looked at the male nurse's patient data on his treatment for the HIV virus. Because of the hospital's archiving procedure, it could not determine whether people other than medical staff had wrongfully read the male nurse's patient data, which was intended only for medical staff. The European Court noted that it was important to protect patient data not just for the patient's privacy, but also in order for the patient's trust in medical and health care. National legislation would provide the necessary guarantees that no one had access to, or had disclosed, patient data in contravention of Article 8 of the European Convention. See also *K U v Finland* (2 December 2008) where the European Court noted that privacy had been violated when a person who had published a personal ad of a sexual nature on the Internet in the name of a minor, without the minor's knowledge, could not be prosecuted due to legislative shortcomings.

143 KB 2001:11 p. 96.
145 KB 1996:2 p. 4 and 10.
146 36 opinions were submitted to the Ministry of Justice. In June 1996 a summary of the opinions was published, *Tiivistelmä sananvapaustoimikunnan väli- mietinnöstä annetuista lausunnoista*.
147 KB 1996:2 pp. 5–6. See also ibid pp. 16–17.
148 46 opinions were submitted about the Commission report. A summary of these was compiled by the Ministry of Justice in September 1997, *Tiivistelmä sananvapaustoimikunnan mietinnöstä annetuista lausunnoista*.
149 A total of 27 opinions were submitted in the autumn of 2001. These are available from the Ministry of Justice.
150 The Government bill (54/2002) which led to the adoption of the Freedom of Expression Act refers (p. 90) to crimes against freedom of expression. In my view, 'expression crimes' is a better term, since expression which is included in freedom of expression cannot be criminal.
151 Only Sections 12, 14, 16, 18, 19, 22 and 24 apply.
152 Under the original legislation proposal (RP 54/2002 p. 99), the area of application was not to include online publications run by private individuals, or websites that private individuals run for profit. The Committee on the Constitution, however, (GrUB 14/2002) was of the opinion that ‘the restrictions must also apply for private individuals’ websites when they intend to gain financially from them and despite the fact that these sites may in some cases be considered to fulfil the definition of a web publication’. The restriction of the area of application of the Freedom of Expression Act applicable to individuals is thus to be given a broad interpretation.
153 Section 2 of the Freedom of Expression Act defines terms that are important for the application of the act. *Periodical publication* refers to a publication intended to be published regularly, at least four times a year. The term makes no distinction as to the content of the publication, so that even an advertising catalogue which is published four times a year is a periodical publication. *Online publication* refers to a uniformly-structured group of online messages intended for regular publication, in a way similar to a periodical publication, in which the material has been produced or processed by the publisher. Thus, websites which are not regularly updated and discussion forums that contain material produced by the public are not, for example, online publications. *Programme*
When concepts of press freedom met reality in Finland

refers to a unified group of online messages, primarily expressed using sound or moving images.

154 Pohjolainen 1996 p. 163.
158 Under Section 85 a, Item 1 (706/2012), point 8 of the Value Added Tax Act (1501/1993) the VAT rate to be applied to sales, intra-community acquisitions and the importation of newspapers and periodicals subscribed to for at least a month is 10 per cent. Between 1 January 2012 and 31 December 2012 the VAT rate was 9 per cent, and before 1 January 2012 it was 0 per cent. The general rate of VAT is 24 per cent.
159 Nieminen 2015 p. 31.
160 Re the latter, see professor Esa Väliverronen: Sosiaalinen kupla kaventaa mediamaisema.
162 Re the latter, see Karppinen 2015 p. 48.
165 Re the latter, see Nieminen 2015 pp. 22–23.
166 See Karppinen 2015 pp. 50–53.
168 RP 19/2013.
The Fundamental Law on Freedom of Expression – the principles of the Freedom of the Press Act extended

Bertil Wennberg

Early developments

Radio broadcasts to the general public first became possible in the 1920s. This new technology was put to use in different ways in different countries.

In the United States, broadcast media were left unregulated. Financed through advertising revenue, they were essentially without control by the state.

In Great Britain, broadcasting activity was regulated by means of an agreement between the British Broadcasting Company Ltd (BBC), a consortium of radio manufacturers and the General Post Office. The BBC was organised as a monopoly. This arrangement was intended to protect it against commercial pressures and attempts to influence content. It was also intended to ensure that the company’s broadcasts could be received throughout the country and that its programmes would be of a high quality.

The arrangement chosen in Sweden emulated the British system. An agreement was drawn up between Telegrafstyrelsen (the Board of Telecommunications), a state authority, and Radiotjänst, a private company. Ownership of the company was shared between the press, Tidningarnas Telegrambyrå (TT, the largest news agency) and the radio industry. Radiotjänst was to produce the programming, while Telegrafstyrelsen would provide distribution etc.

The agreement imposed significant restrictions on the programming company in terms of what programmes could contain. They had to be of varied type, offer good recreational value, be aimed at maintaining the public’s interest in broadcast radio, uphold a high moral, cultural and artistic level and be characterised by trustworthiness, objectivity and impartiality. Popular enlightenment and education were to be promoted.
Advertising was prohibited in radio broadcasts, and newscasts were reserved for TT. The conditions laid down for broadcasting activity did not leave room for any competing companies.

Conditions were not equivalent to those applied to printed media in either form or content. Through the members of the government-appointed Programming Council (Programrådet), which had an advisory role, the Ministry for Foreign Affairs could exercise a certain influence over what was aired.

The primary emphasis for broadcast radio was public education; news reporting was limited. Radiotjänst did not have any news reporters of its own. Eventually, however, a shift towards a more active form of journalism began to occur.

During WWII, certain restrictions on the freedom of expression made themselves felt within both broadcast radio and printed media. These are described, with respect to the Swedish printed media, in Hans-Gunnar Axberger’s and Nils Funcke’s contributions to the present volume. With respect to broadcast radio, the developments have been described as a considerable strengthening of the influence that the Ministry for Foreign Affairs had wielded over radio since its earliest days.¹

After the end of the war, certain changes appear to have set in. Broadcast radio began to develop towards more independent journalism. In connection with a major review of press freedom law that was carried out after the war, the Swedish Publicists’ Association (Publicistklubben) stated that it could be expected that legislation in the not too distant future ought to consider the problem of radio freedom. Several forms of communication conditioned by technological developments would, in the Association’s view, be in a similar position to that of the printed word. These included radio, which had become an increasingly important instrument for disseminating information as well as ideas and opinions. However, the issue was not ready for legislation at this time, and the matter was left at the concept stage in the constitutional context.²

Over the course of the continued development of Radiotjänst’s activities, journalistic independence was substantially strengthened. A new radio medium also made its debut. Radiotjänst was given the right to broadcast television programmes, and began such broadcasts in 1956.

Safeguarding freedom of expression gathers pace

Under these circumstances, the need to strengthen the legal protection of freedom of expression in newer types of media continued to crop up. In the case of sound radio and television, new general law statutes were
adopted in 1966 which in terms of the right of disposition of, and responsibility for, the content of broadcasts, were essentially based on the fundamental principles of press freedom (the Broadcasting Act, SFS 1966:755, the Broadcasting Liability Act, SFS 1966:756). On this occasion too, the idea of enshrining certain elements of the radio statutes in constitutional law was raised. Similar legislation was later added for more recent forms of radio such as community radio, local radio, local cable transmissions and radio magazines.

The idea of a more general legislation at the constitutional level for the safeguarding of freedom of expression was eventually raised with greater resolve. A commission was appointed in 1970. Its proposal presented in 1975, however, deviated from what had been laid down in the Freedom of the Press Act (Tryckfrihetsförordningen), not least in that it proposed the creation of a national court for freedom of expression cases. This was to be located in Stockholm and was to include, in addition to law-learned judges, seven lay judges appointed by the Riksdag. This proposal aroused fierce criticism (cf Hans-Gunnar Axberger in this volume). It led to changes to certain important sections of the Freedom of the Press Act, but not to any broad constitutional protection for newer media.
However, efforts to expand constitutional protection for freedom of expression were not abandoned. According to a statement in the bill proposing a partial reform of the Freedom of the Press Act, the idea of such legislation was regarded as having gained in strength.\textsuperscript{4} A new all-party commission inquiry was appointed in 1977, and took the name Yttrandefrihetsutredningen (the Freedom of Expression Commission). Its Chair was the editor-in-chief of Eskilstuna-Kuriren, Hans Schöier.

The Freedom of Expression Commission applied a principle-based approach to the problem of freedom of expression and the opportunities to safeguard this freedom by means of constitutional legislation.

According to the Commission, what required justification was not the freedom itself, but encroachments on it. Despite this, it was common to see lengthy justifications of freedom of expression, as if it were necessary to prove that it had its merits. The Commision wished to warn against this attitude. Vigilance was required against the risk that detailed justifications of freedom of expression could be reformulated into equally detailed restrictions of it, the Commission argued. New forms of expression, it maintained, are sometimes met with suspicion. Will they be abused? Are they really necessary? Will the information pressure become too much? The Commision regarded this type of question as wrongly posed from a freedom of expression perspective. 'It is not the choice of form of expression that should determine the right to express oneself. Restrictions of quantity are easily transposed to restrictions of quality; concern becomes paternalism.'\textsuperscript{5}

The most successful paradox of an open society, the Commission stated, is the ambition of its legislators to set well-reasoned barriers to their own opportunities for meddling with citizens’ rights and freedoms. Sweden was one of the countries in which this paradox had been taken furthest. What lay behind this, according to the Commission, was the insight that a free society cannot rely only on the good intentions of the people who are responsible for decisions at any given time. Instead it must seek its assurance in institutional arrangements that provide room for counsel and impel reflection, that can weather harsh conditions and bridge shortfalls in democratic commitment.

The Commission’s view was that the legal protection of the right to express yourself in other ways than through printed publications was less complete and more uncertain than that which applied under the Freedom of the Press Act. This, the Commission held, required a justification of principle. It had not been able to find any such justification that was tenable.

expression, to apply alongside the Freedom of the Press Act. It would cover programmes in broadcast and cable media, sound recordings, recordings of moving images and such stage representations and exhibitions as had an appointed publisher. To the greatest extent possible, it would be based on the same fundamental principles as the Freedom of the Press Act. Only in the requirement for permission to use the radio frequency spectrum for wireless broadcasts, and for the public reproduction of recordings of moving images, were differences regarded as unavoidable – in the former case for reasons of physics, and in the latter for the protection of children and young people.

The reason the Freedom of Expression Commission proposed a separate fundamental law for other media than the printed media was a concern that the protection of press freedom could become diluted if newer media were also to be protected under the same fundamental law. In the debates of this period, reference was frequently made to the ‘risk of contagion’.6

The comprehensive digital development that we have seen since the Freedom of Expression Commission was appointed had already begun, to some extent, at the time. Broadcast teletext, view-data and telefax were all forms of information transfer referred to in the Commission’s report, and so were databases. The far-reaching possibilities, in theory, of fibre optics were also evident to the Commission. However, no one could know in any greater detail what forms these developments would take. Much of what has since emerged was as yet unknown.

In keeping with its principle-based approach, the Commission proposed that transmissions to the public of sound, images or text via cable should be permitted without special permission from the authorities. The idea was for the principle of freedom of establishment to apply along the lines of press freedom legislation.

The legislative process continues

As a result of the Freedom of Expression Commission’s report, the issue of broadening constitutional protection for freedom of expression had arrived at a point where there was a chance of achieving results. The circumstances
were far from simple, however. Technological developments produced, at a rather rapid rate, new applications or media forms which could not be left without consideration if the constitutional protection of freedom of expression was going to be as comprehensive as possible, while at the same time maintaining a status as robust and reasonably well-functioning. Television via satellite and cable was one technology that broke with the old order of having one national TV company, for example, while videograms distributed over the counter was another technology that caused considerable concern, as this channel was often used for the distribution of portrayals of violence. It was clear that legislators’ endeavours had to be coordinated if principle-based protection of freedom of expression at the constitutional level was going to be realised.

Considerable efforts and fairly extensive political adjustments would prove necessary in order to achieve a result. A first proposal for constitutional protection, with the Freedom of Expression Commission’s report as its basis, was sent to the Council on Legislation for review in 1986. The proposal involved extending the Freedom of the Press Act to include a second section that would contain regulations to protect freedom of expression in media other than printed publications. The proposal became the target of criticism from the daily press, born of the suspicion that the intention was to reduce press freedom, and it became so vehement that there was uncertainty as to whether the proposal would be adopted by the Riksdag. The proposal was never presented to the Riksdag in its entirety; only specific and limited parts of it, concerned with various reinforcements of the protection of press freedom, were laid before the legislature.

The Riksdag’s Committee on the Constitution was dissatisfied with this turn of events. The anticipated, significant bill on constitutional protection of freedom of expression in newer media had failed to reach the finishing line. Reaching a decision on this issue was a matter of urgency, in the Committee’s view. Once the limited changes to the Freedom of the Press Act had been adopted, the Government got back to work on a more extensive fundamental law. A drafting group was assembled consisting of representatives from all the political parties in the Riksdag.

These efforts finally met with success. The parties were able to agree in principle on the contents of a new fundamental law. A new, fully-completed proposal was produced. It coincided in key respects with the earlier proposal by the Freedom of Expression Commission. To this were added elements made necessary by the media development that had become technically and practically possible over the course of the legislative process, as well as certain elements which were necessary in order to obtain sufficient agreement on the import of the new fundamental law. Following a review
The new Fundamental Law on Freedom of Expression (Yttrandefrihetsgrundlagen) was conclusively adopted after the elections to the Riksdag in the autumn of 1991, and came into force on 1 January 1992.

Grounds for the Fundamental Law on Freedom of Expression in press freedom law

The new fundamental law is based, as far as possible, on the Freedom of the Press Act. The fundamental principles of the Act were duplicated to the greatest possible extent, including with respect to the delimitations of the scope of constitutional protection established in the area of press freedom.

In the same way as the Freedom of the Press Act, the Fundamental Law on Freedom of expression links the protection of freedom of expression to the use of certain technologies: transmissions of sound, images or text carried out with the use of electromagnetic waves, i.e. sound radio, television and similar, and to sound recordings and recordings of moving images. This means that the fundamental law does not need to distinguish between valuable and valueless expressions and representations. The regulations apply without regard to the content of what is expressed. Only statements which, as laid down in the fundamental law, are punishable under ordinary
law – such as instigation of racial hatred and defamation – may occasion intervention. In such cases, the same special rules of legal procedure apply as under the Freedom of the Press Act, i.e. with the Chancellor of Justice as sole prosecutor and with recourse to examination by a jury.

The scope of the fundamental law is limited, in the same way as the Freedom of the Press Act, by its purpose. Certain expressions are regarded as punishable offences in other respects than as abuse of freedom of expression. These include fraud and forgery. A subsequent amendment has excepted child pornography from the scope of application of the fundamental law.

Film artists have censorship as their main slogan in the 1958 May Day demonstration in Stockholm. Svenskt Fotoreportage collection/Historisk Bildbyrå.

A prohibition on censorship has been effected, albeit with an exception for cinema censorship, which has existed in Sweden since the early 20th century. Today this exception is used solely for legislation on previews of moving images to be shown in public to children under the age of fifteen. Developments leave scope for a strengthening of constitutional protection.

The principle of freedom of establishment is laid down for all media in the fundamental law, with wireless radio broadcasting as the only unavoidable exception. With respect to cable transmissions this means that a contemplated, more or less extensive, system which included the obli-
gation of obtaining a concession from public authorities could be avoid-
ed. Such restrictions of the right to transmit via cable as may be imposed
under the fundamental law – e.g. the obligation for network owners to
provide capacity for certain programmes to the extent that this is neces-
sary in view of the public benefit of providing access to comprehensive in-
formation – must under the Fundamental Law on Freedom of Expression
be prescribed in law. Freedom of establishment also includes the actual
installation of cable networks. The Freedom of Expression Commission’s
proposal on the matter of freedom of establishment held up throughout
the entire legislation process, and comes across in retrospect as something
of a breakthrough.

In connection with the regulation on freedom of establishment, the
Fundamental Law on Freedom of Expression also laid down protection of
the right to possess such technological aids as are necessary to be able to
receive or perceive constitutionally-protected representations. This applies
e.g. to radio receivers, but also to more modern devices. Such a right is
considered implicit, in relation to printed publications, in the Freedom of
the Press Act as well. In the light of history, it cannot be taken for granted.

Unsurprisingly, issues concerning the conditions and prerequisites for
radio and television had aroused considerable interest during the final
phase of the work on the Fundamental Law on Freedom of Expression.
Different views had been expressed with respect to the right to establish
operations for wireless transmissions to the public. In more concrete
terms this was a question of the radio monopoly, i.e. the sole rights initial-
ly granted to Radiotjänst and now held by its successor, Sveriges Radio (a
group of companies). The issue also concerned whether advertising should
be allowed in broadcast media.

These differences of opinion had initially been resolved by including a
requirement that public authorities must strive to ensure that radio fre-
nuencies are used in such a manner that the broadest possible freedom of
expression and freedom of information are achieved. It was additionally
prescribed that there be a statutory opportunity for associations to obtain
permission to broadcast sound radio programmes in local radio broad-
casts, to the extent allowed by the radio frequencies available. As far as
commercial advertising was concerned, the Fundamental Law expressly
allowed for regulations on bans and conditions to be issued in general law.
The same applies to sponsoring.

However, the Fundamental Law on Freedom of Expression does not
consider the question of whether the right to broadcast sound radio and
television should be held by a single company or spread between several.
The idea was to allow for a debate on the future use of radio and television
that did not feature constitutional arguments. The Fundamental Law accordingly allows for the regulation of the right to transmissions by means other than cable through legislation that contains stipulations on licences and conditions for transmission.

The currently-applicable Radio and Television Act (2010:696) stipulates that such licences may be granted by public authorities only when the recipient of the licences has approved the conditions. Only certain specified conditions are permitted under the law. The conditions for broadcasting licences must be consistent with the regulations in the Instrument of Government on restricting fundamental freedoms and rights, and with the Fundamental Law on Freedom of Expression. It is established practice for these licences to be subject to examination by the Riksdag.

The system that was originally based on an agreement between the Board of Telecommunications and Radiotjänst AB can thus remain as a concession system in its modern form, the Fundamental Law on Freedom of Expression notwithstanding. At the same time the Fundamental Law on Freedom of Expression ensures that a radio monopoly can no longer be maintained. The Law also guarantees judicial review for issue of transmission rights.

The Fundamental Law on Freedom of Expression lays down that whoever broadcasts radio programmes independently determines what they should contain. A provision of this tenor was originally part of the 1966 Radio Act. During the drafting of the fundamental Law, it was dealt with in conjunction with the issue of a radio monopoly and a concession system. In its ultimately-adopted wording, the provision applies for transmissions of all kinds, regardless of whether they occur wirelessly or in any other way, and regardless of who is running the programming operation. It is intended as protection against pressures from all imaginable quarters, not least from public bodies. One of the stated grounds for the Fundamental Law on Freedom of Expression is that it will guarantee the journalistic autonomy and independence that are at the core of the position that public service radio and TV should hold. The provision may be regarded as the fulfilment of the drive towards freedom and independence described in brief above as it relates to the public service companies, but which applies to all who pursue transmission activities under the protection of the Fundamental Law.

The technological and practical developments that occurred during the lengthy work on the new Fundamental Law created the necessity for solutions to issues which had arisen more recently. Not least among these were the difficulties posed by interactive electronic communication for the formulation of generally-applicable rules to protect freedom of expression,
with the Freedom of the Press Act as a model. When the proposal for a Fundamental Law on Freedom of Expression was presented, the Minister for Justice noted that emerging media were breaking earlier moulds. They could be used for communication between individuals, in what mostly resembled ordinary mail, as well as for distribution to larger and more indeterminate groups, in a manner more reminiscent of broadcast radio. And the terminology in this area had not settled into any definitive form. At any rate, it had not been developed with the aim of making legal distinctions possible.\(^9\)

A new issue concerned the newspaper companies’ need to develop operations by distributing their editorial products in electronic form. The solution, as proposed by the Freedom of Expression Commission, was an amendment to the Freedom of the Press Act under which an electronically-distributed version of the contents of a printed publication was to be equated with a supplement to the printed publication to the extent that it matched the printed version. This was known as the ‘supplement rule’.\(^9\)

In its consideration of these issues, the Freedom of Expression Commission had attached considerable importance to ensuring that the consolidated publishing responsibility for statements distributed in various forms from an editorial office was not undermined. The Commission’s view was that the publisher should have a leading position at the editorial office: ‘In our opinion, the person who is responsible for the printed original should also be answerable for freedom of expression offences in a version of the publication distributed by means of radio broadcasting or via cable, or in the form of a sound recording on a phonogram. The significance of this principle is not limited to current radio or cassette publications. In the future newspapers may use other forms of complementary technology to spread their content among the public. It will be important in this event that consolidated publishing responsibility is not undermined.’\(^10\)

The Commission’s members represented considerable journalistic experience. It is hardly far-fetched to see its attitude on the issue of the publisher’s responsibility against the background of the then-current debate about press ethics and a responsible approach to the practice of journalism. In the introduction to its report, the Commission described how the Freedom of the Press Act provides precise rules for resolving conflicts between freedom of expression and other values such as personal integrity and national security. However, the emphasis was on journalistic rather than judicial responsibility: ‘It is not in the interests of freedom of expression to establish an increasingly extensive catalogue of case law. Depending on the direction such a catalogue takes, it can lead to diffidence or ruthlessness in the use of the word, while at the same time independent responsibility for its management is reduced in favour of legal counselling.’\(^11\)
The ‘supplement rule’ is included in Chapter 1, Article 7 of the Freedom of the Press Act, and is based on the Commission’s approach. But the question is what significance it has at present. The distribution of editorial material that corresponds to a printed original in such a way that it comes under the supplement rule is perhaps no longer a common occurrence.

During the all-party drafting group’s deliberations about the wording of the new Fundamental Law, agreement had also been reached, in principle, that the new law ought to provide further specified protection for editorial activities using new technology. This led to the inclusion of a provision for the protection of information from registers destined for automatic data processing. The justification for including this in the Fundamental Law proposal was that not all the material that reaches a newspaper’s editorial office on a daily basis can fit into the printed paper, and that even such information as is going to be printed only reaches readers the following day. The need for protecting freedom of expression in this context stemmed from the view that modern communications technology ought to be usable by news providers and opinion formers on the same terms as the printed word. The constitutional protection was consequently restricted to certain types of companies. It would apply when editorial companies furnish, on request, the public with information from data registers, on condition that the recipient is not able to alter the content of the register. This rule meant that consolidated publishing responsibility was safeguarded.

This regulation, the ‘database rule’ in Ch 1, Article 9 of the Fundamental Law, has been stipulated in answer to a growing practical need. Newspapers’ finances are greatly influenced by the rapid development of electronic media. Over time, most newspaper businesses have begun distributing journalistic material in electronic form. The database rule has been amended and extended in several stages in order to keep pace with technological developments and maintain effective constitutional protection, though some problems remain to be resolved. Further amendments to constitutional regulation in this area may be expected.

One significant development in terms of the database rule is that it has also been made possible for entities other than editorial companies to obtain a publishing certificate in order voluntarily to submit to the Fundamental Law’s regulatory system. The idea behind this expansion was to enable all individuals to distribute their message to the general public while enjoying the same protection of freedom of expression as when printed publications or their equivalents are distributed. At the same time, and in keeping with the established pattern of press freedom law, the Fundamental Law markedly simplifies interventions against criminal statements in databases, as the publishing certificate specifies a publisher who is answerable for its content.
The Fundamental Law on Freedom of Expression

Technological developments have further occasioned an expansion and more detailed specification of the definition of what constitutes a radio programme, as applied in the Fundamental Law on Freedom of Expression. Webcasts and podcasts have become common, and are now dealt with in the Fundamental Law as radio programmes, provided they are broadcast on the sender’s initiative and their content cannot be changed by receivers. The publisher’s disposition over content is thus a prerequisite for the applicability of the Fundamental Law with regard to webcasts and podcasts as well. But for newspaper companies the automatic consolidation of publishing responsibility has not been preserved in relation to these broadcasts. Publishers of online magazines are appointed in accordance with the regulations on radio programmes. However, there is no obstacle to appointing the same person as publisher for all of a company’s different publication channels.

Another issue that emerged during the final preparation of the Fundamental Law on Freedom of Expression occurred due to emerging technology for the transmission of radio and television via satellite. The underlying ambition of applying Freedom of the Press principles in the new Fundamental Law was expressed here by the stipulation of two rules. One states that satellite transmissions originating in Sweden are normally covered by the same constitutional protection as traditional radio broadcasts within the country, irrespective of where they are intended to be received. The other concerns retransmission of programmes received directly from other countries or via satellite from third countries. With respect to such transmissions, the Fundamental Law is applicable inasmuch as is feasible, e.g. regarding the ban on censorship, the freedom to transmit via cable and protection of the right to possess technological equipment.

The Fundamental Law on the Freedom of Expression and media development

The new fundamental law came into being during a period of rapid development in the area of mass media. This development was driven by technological innovation. The concern that this process would give cause for regulations that restricted the freedom to express yourself and to disseminate and receive statements was an important motive for strengthening and expanding the constitutional protection of freedom of expression. In the longer term, it must be expected that financial factors may change the preconditions for different ways of conveying statements to the public, as the Minister for Justice stated in the draft bill of the Fundamental Law
in 1990. Developments in telecommunications and data technology, not least, could exert profound effects. We cannot predict how technological or financial changes will affect methods of distributing news or representations with other content. The ambition should be that the new system of regulation provides protection that is as comprehensive as possible. And it was precisely in this that an essential part of its significance lay, stated the Minister for Justice.\textsuperscript{13}

Manifestation against Nazism and violence, Linköping, November 2005. Four torchlight processions marched through the city under the slogans of freedom of the press, freedom of religion, freedom of expression, and freedom of association. Photo: TT Nyhetsbyrån.
The Minister for Justice also expressed an awareness that developments could be expected to give cause for continued expansion and adaptation of protection of freedom of expression at the constitutional level. When the proposal was referred to the Council on Legislation, the Minister explained that she was aware that there could be different opinions as to how the fundamental law might need to be developed. And indeed, the detailed formulation of regulations in the fundamental law has been adapted over time in order to maintain the broadest possible protection of freedom of expression – not least with regard to new technologies for the transmission of messages and information.

More or less troublesome demarcation issues have nevertheless cropped up in the application of the regulations in the Fundamental Law. In order to address difficulties of this kind, the terminology used in the law has been developed. The generic term ‘technological recordings’ has been introduced for the purpose of encompassing recently-added media forms. Furthermore, in order that constitutional protection will also apply to digital cinema, the scope of the law has been extended so that ‘public playback from a database’ will be covered by the same rules as radio programmes.

Consequently, the ambition that the new Fundamental Law modelled on the Freedom of the Press Act provide the most comprehensive protection possible has been achieved. Certain other difficulties in assessing the scope of the Fundamental Law in individual cases have been met with a general presumption intended to guide the assessment of whether a technological recording is to be regarded as published. Applicability of the Fundamental Law has also been limited with respect to technological recordings which are only sent abroad.

The fact that constitutional protection continues to apply to the freedom to address the general public with statements conveyed by technological means, signifies that the Fundamental Law, in the same way as the Freedom of the Press Act, may essentially be applied to all statements irrespective of their content. Aside from child pornography and the limitation to the scope of protection which under the exclusivity principle is implicit in its purpose, legal measures can only be taken against statements in constitutionally-protected media inasmuch as such statements constitute one of the offences specified in the Freedom of the Press Act. Thus the Fundamental Law is not based on any perception that certain types of statements are more important than others. It is not possible, as the Freedom of Expression Commission pointed out, to identify in advance the statements of opinion that will be of lasting value, and not merely fade away. Here the Fundamental Law differs, in the same way as the Freedom of the Press Act does, from the Instrument of Government whose regulations for the
The establishment of the Fundamental Law was preceded by a long-drawn-out, intensive general discussion about the issue of the position press freedom would have in an expanded constitutional system for the protection of freedom of expression. It was feared in various quarters that press freedom would be reduced or lost because regulations regarding the newer media could not, in all respects, be made fully equivalent to those that applied to printed publications. One line of discussion regarded not instituting any new fundamental law at all as the best option. Others feared that perhaps the idea of expanded protection for freedom of expression was, in fact, a way for the powers-that-be to undermine press freedom. It would be better, they felt, to rely on the Freedom of the Press Act to exercise influence even beyond its actual area of application, and the authorities’ attitude towards other forms of expression be influenced by the values expressed in this Act. It would be meaningless to prohibit the staging of a play, for example, if its contents could be disseminated in print without sanction. This was known as the ‘umbrella effect’.

Eventually the discussion coalesced around the issue of whether constitutional protection of freedom of expression should be enshrined in a single coherent fundamental law, or whether the Freedom of the Press Act should be retained and a new fundamental law for the protection of freedom of expression in other media be created alongside it. This discussion was also under way within the Freedom of Expression Commission. The Commission wrote that in the longer term its sympathies lay with the coherent law. This best satisfies the criterion that all statements, regardless of their medium, be guaranteed the same constitutional protection to the greatest possible extent. Note the qualification: provided that the law is coherent in substance as well as in principle. However, fears about the future of press freedom could not be brushed aside. In the Commission’s view, this uncertainty suggested that a bird in the hand is worth two in the bush. As described above, the Commission’s proposal was that a new fundamental law for the protection of freedom of expression in newer media be instituted and apply alongside the Freedom of the Press Act.

In 1987, in the preparatory works for the legislation that would finally become the Fundamental Law on Freedom of Expression, the Minister for Justice wrote, apropos the disposition of the new constitutional elements, that ‘(…) a separate fundamental law on freedom of expression may come to be seen as something of an experimental area of media policy. The possibility cannot be excluded that such a development would, in the long
term, imply risks to press freedom as well as for freedom of expression in other media.\textsuperscript{14} This was a factor that spoke against adopting a separate fundamental law for newer media, and which favoured subsuming the new regulation into the Freedom of the Press Act. Nevertheless, as we have seen, a separate fundamental law on freedom of expression was adopted a few years later.

The concern that developments would bring new, limiting regulations was a decisive reason why the new constitutional protection was conceived as a separate fundamental law alongside the Freedom of the Press Act. The idea was that press freedom would not be affected if technological developments necessitated adjustments to the new Fundamental Law. In the bill, the Minister for Justice stated that the proposal meant that the freedom to express yourself in the newer media could be provided with protection that was essentially equivalent to the time-honoured protection of press freedom.\textsuperscript{15} This turn of phrase has typically been perceived to mean that the new Fundamental Law should, in doubtful cases, be interpreted analogously with the Freedom of the Press Act, while the converse – i.e. that the Freedom of the Press Act be interpreted on the basis of how a corresponding issue has been resolved in the new Fundamental Law - should not occur.

The waves of technological and economic developments that were vaguely discernible, and could to some extent be anticipated, when the Fundamental Law on Freedom of Expression was drafted have in no way abated. Rather, the changes that have occurred have turned out to exert a considerable influence on the ways in which news and representations with other content are distributed. Today there are even people who doubt that printed publications will be able to maintain their significant position over the longer term. This applies not least to the daily newspapers. If the new Fundamental Law had not been adopted, we would eventually find ourselves without detailed constitutional protection for forms of communication that dominate our exercise of a free exchange of opinions and our access to comprehensive information.

In that situation, we would have to rely on the umbrella effect mentioned earlier. Would perhaps interventions against statements in newer media appear meaningless if the same statements could still be distributed in printed form? The position of the Freedom of the Press Act as a cornerstone of our constitutional system might influence the application of ordinary laws that concern conditions for freedom of expression, e.g. such laws as could have been adopted regarding the newer forms of media. Perhaps – but it appears far from certain that this could be expected to happen.
The experience from the few cases that have been taken to the Supreme Court points in a different direction. In cases which are not processed according to press freedom law procedure, decisive significance is attached to the balancing of freedom of expression with opposing interests, as legislators have laid down in ordinary law. The outcome is not affected, in the individual case, by an opposing freedom of expression interest which is not covered by detailed constitutional protection. The terms of reference for press freedom law are not the guiding principle. The umbrella is not big enough, as the Freedom of Expression Commission expressed it.

Another matter is that ordinary laws which were at odds with the Freedom of the Press Act could be disregarded with reference to the provision on judicial review in the Instrument of Government. The long-term role of courts as defenders of constitutionally-enshrined values could, during grave or critical political situations, come to the fore in this way. The principle-based approach adopted by the Freedom of Expression Commission included the view that a free society must also seek its assurance in institutional arrangements that provide room for counsel and impel reflection, that can weather harsh conditions and bridge shortfalls in democratic commitment. The constitutional form of the protection that the Freedom of the Press Act accords free speech is such an arrangement. The same applies to the Fundamental Law on Freedom of Expression.

One basic precondition for the work on this constitutional issue was that constitutional protection of press freedom was not to be weakened as a result of other forms of expression being given similar protection. It is debatable whether such concerns were justified. In the 1986 Government bill including proposals for limited changes to the Freedom of the Press Act, the Minister for Justice stated that what above all sustains constitutional protection of fundamental rights and freedoms is vigorous commitment to the values that these rights and freedoms are an expression of. That commitment, according to the Minister, was strongly in favour of press freedom.

This statement was made in the context of the issue of how constitutional protection of freedom of expression would be shaped in practical terms – if there was going to be a single fundamental law or two. This issue has been decided, for now, through the institution of the separate Fundamental Law on the Freedom of Expression, although there continues to be considerable debate about the arrangement, and new proposals have been presented. But the idea that lay behind it remains pertinent: no constitutional protection will hold up in the long run if it is not sustained by a vigorous commitment.
Rooted in the original 1766 Freedom of the Press Act, this idea runs as a theme through developments up to and beyond 1809. The hurriedly-written 1809 Instrument of Government contained, as a kind of premise, the notion that the recaptured press freedom would bring with it an improvement in people’s knowledge and commitment which would eventually create opportunities for improving the new Constitution. And indeed, the constitutional edifice was completed with extensive fundamental law regulations on press freedom, added in 1810 and 1812 – and admittedly not without problems of their own. The Fundamental Law on Freedom of Expression may be seen as a present-day confirmation of the significance of the Freedom of the Press Act in the judicial system, added in the spirit of vigorous commitment. It is evident that committed solicitude for legal preconditions, which also cuts through technology and detail, is required today if constitutional protection of the freedom to address each and everyone through mass media is going to be allowed to continue developing according to the tried and tested principles gleaned from long experience of press freedom law. It was this kind of solicitude that the Freedom of Expression Commission expressed in the very title of its report, *Defend the freedom of expression.*
Notes

1 Göran Elgemyr, *Får jag be om en kommentar?* (‘May I request a comment?’) 2005, p. 476.
3 Government bill 1966:149 p. 27.
8 Government bill 1990/91:64.
11 SOU 1983:70 p. 78.
12 This rule was recently cited in a judgement by the European Court of Human Rights (Arlewin v. Sweden).
16 NJA (Nytt juridiskt arkiv, an annual publication of Supreme Court judgments) 1985 p. 893, NJA 2014 p. 808.
20 See Hans-Gunnar Axberger in this volume.
The Principle of Public Access to Official Documents in Europe

Helena Jäderblom

The Principle of Public Access to Official Documents at national level

There are principles for public access to official documents in most European countries. Of the 28 EU member states, only Cyprus and Luxembourg have not established any fundamental right for citizens to study the contents of official documents.¹ Among the 47 member states of the Council of Europe, in addition to these two countries, Andorra, Liechtenstein, Monaco and San Marino also lack rules on public access to documents.² The overwhelming majority of the countries in Europe have thus introduced public access to documents into national legislation. The rules vary both in form and content. In a number of countries, a fundamental right to study the contents of official documents had been established in the constitution early on, but in certain quarters detailed regulations are lacking on how public access to documents is to be applied.

Another important cornerstone of the publicity principle – freedom and protection of communicators of information similar to the Swedish system - is not found anywhere else in Europe, even though principles have been developed in a number of countries, chiefly within labour legislation, for the protection of whistle blowers.

Sweden was alone in its legislation on public access to documents until well into the twentieth century. In Europe, the next country – Finland – adopted a law on public access to documents in 1951. Norway and Denmark followed in 1970 (although in Denmark there had been a limited right to study the contents of official documents since 1964). In the meantime, the United States introduced (as the first country outside Europe) a set of rules through the Freedom of Information Act, which entered into force in 1967. An external survey, before returning to Europe: Australia, New Zealand and Canada introduced public access to official documents
in 1982 and 1983. In South America, legislation on public access to official documents was introduced in a number of countries during and after the first decade of the century, including Mexico (2003), Chile (2009), and Brazil (2011). One important step in Latin American development was the fact that the Inter-American Court of Human Rights, in its 2006 decision, established that freedom of expression and of thought in Article 13 in the American Convention on Human Rights includes a right of general access to state-held information. From the beginning of the century to date, a number of regulations in the area have been adopted in Africa and Asia, including in South Africa, Zimbabwe, Liberia and Uganda, as well as in Japan, India, Pakistan and Thailand (in the latter since 1997). Legislation projects are also under way in other countries on these continents.

But now back to Europe. It can be stated that it took close to 200 years before the public access principle met with interest outside our country, and then chiefly in the other Nordic countries. Iceland was a little behind, but in 1996, rules on public access to official documents were introduced there as well. Since the second half of the twentieth century, there have been movements in Europe that have forced the pace on issues concerning the relationship of public documents to citizens, often within subject areas such as consumer and environmental affairs. One central issue in Western democracies has been how government agencies could best serve their citizens. As an effect of this, legislation on public access was introduced in many quarters in Western Europe. France, which introduced legislation relatively early, adopted a general provision in 1978 that citizens had the right to obtain copies of “administrative” documents. This was introduced into a law that concerns measures to improve relations between the administration and the general public. The Netherlands was also relatively early: in 1980, a law on access to government agency information was adopted. As for the rest of Western Europe, Greece (1986), Austria (1987), Italy (1990), Belgium (1994), Ireland (1998), Liechtenstein (1999), the United Kingdom (2000), Switzerland (2004), Germany (2005; there, however, a number of länder, at the state level, had previously introduced rules on public access to documents), Portugal (2007), Malta (2008) and Spain (2014) can be mentioned.

For easily explained reasons, the former Eastern Bloc demonstrates another, more coherent development. After the collapse of the Soviet Union, and as part of the reforms that were necessary in their striving for democratisation, it was natural that focus was placed on legislation concerning the administration and protection of freedom of expression and other fundamental freedoms and rights. Hungary introduced rules on public access to official documents in 1992; Lithuania in 1996; Latvia and Georgia in
1998; the Czech Republic in 1999; Estonia, Slovakia, Bosnia and Herzegovina, Bulgaria and Moldova in 2000; Romania in 2001; Poland in 2002; Slovenia, Croatia, and Serbia in 2003; Montenegro and Azerbaijan in 2005; Macedonia in 2006; Russia in 2009 and Ukraine in 2011.

I have taken part in assessing and evaluating a number of legislative proposals and in assessing newly-adopted laws in various countries, sometimes as a representative of the Ministry of Justice and sometimes as a collaborator in projects for legislative assistance in the Council of Europe. In Europe, this concerned Armenia, Bulgaria, Macedonia, Moldova, Montenegro, Russia, Serbia, Ukraine, the United Kingdom, Scotland (which has its own rules for certain parts of administration that come under self-government), Hungary and Ireland. During one period in the EU Council of Ministers Working Party on Information, in which proposals for the regulation on public access to documents adopted in 2001 (the Public Access Regulation; see further under the section Transparency in international institutions) were established, and in the Council of Europe Expert Group for access to official information that drafted both a proposal for a Recommendation on public access to documents and a Convention on the same subject (see further under the section International collaboration on the principle on public access to official documents at national level), I gained insight into other countries’ understanding of public access to official documents. In the following paper, I account for my experiences of this.

There are certain elements that must be included in regulations for public access to official documents in order for them to function in practice. These include a distinct and delimited field of application, limits in the form of secrecy rules and other exceptions from the main principle of public access and rules on processing applications to study the contents of documents, on the forms for disclosure of information in them, and on the possibilities to appeal decisions.

As regards provisions on the field of application, which regulate who has the right to study the contents of official documents, how handling is defined, and which public bodies are covered by the obligation to disclose official documents, I have noted the following.

The holders of the rights are often the country’s own citizens. When I have had the opportunity, I have pointed out that a demand of this kind is unnecessary as it is easy to circumvent and administratively troublesome to control.

A number of countries do not have any separate system for the obligation of the administration to disclose information contained in documents; instead, the rules refer to a general obligation to inform. In cases where there is a separate system for disclosure of documents, the defini-
tions of the term ‘document’ vary fairly little. Most countries have broad definitions that, apart from the usual paper documents, cover technological recordings in all possible forms. Discussions similar to those in Sweden are common as regards the definition and the practical limitation of the term ‘document’ concerning electronic documents and other technological recordings.

The conditions under which a document is to be regarded as official, and thereby accessible in principle, belong to the more complicated issues. Through its long practical experience of public access to official documents and its development in case law, Sweden has an advantage here compared to other countries as regards defining the term. National regulations are often not particularly concrete on any of these points, which means that it is fairly unclear what real implications the provisions – which at first can seem far-reaching in the direction of openness – ultimately have after the necessary formation of jurisprudence.

There are different viewpoints as regards which public bodies are covered by the obligation to disclose official documents. In contrast to Sweden, many other countries exclude legislative bodies from the public access principle. Likewise, a number of countries leave out the courts. One explanation for the latter is that provisions on court proceedings in national regulations often contain all-encompassing rules on publicity for both hearings and documents held by the courts. This means, however, that administrative activities in the courts are often exempted from public access to official documents. In a number of countries – the United Kingdom, for example – certain administrative government agencies are expressly exempted from the field of application. As a rule, private subjects are exempted from the principle, but there are examples of the opposite, especially if they are publicly-financed or perform tasks that normally fall to the public sector.

Limitations of public access to official documents are largely applied for the same purposes as in Sweden – that is, to protect certain public and private interests. All countries have rules for protection of international relations, the security of the state, the personal circumstances of individuals and so on. It is, however, rare that all provisions on secrecy are assembled in the same statute, as they are in Sweden. On the contrary, there are often a whole range of statutes with restrictions of this kind in various subject areas. It is thus difficult to have an overview of the extent to which public access to official documents is curtailed by these. Exemptions to secrecy are most often drafted in a more general manner than those in the Swedish Public Access to Information and Secrecy Act. Requirements for harm as a condition for secrecy are generally accepted. An additional condition for
secrecy is often drawn up stating that there shall not be any overwhelming public interest in the information being disclosed. In the countries that have chosen to have general, overall provisions, the more detailed content of the delimitations must be established in case law. A system foreign to Sweden is the relatively commonly-occurring express possibility of rejecting “unreasonable” applications for the disclosure of information.

Processing of applications on the disclosure of documents is often characterised by formalities that do not occur in Sweden. These could involve the requirement that an application must be in writing, or that individuals requesting the information must identify themselves. Almost all countries, however, accept that individuals requesting information does not need to indicate any particular purpose for their request, Italy excepted. In conformity with what is the case in the Swedish Freedom of the Press Act, a requirement that the processing is to occur promptly is often included. In contrast to Swedish law, deadlines for handling are often indicated. This may vary from a few days to a few months. When deadlines have been proposed in laws, the evaluations of which I have participated in, I have argued that, on the one hand, having a guarantee that processing is concluded within a certain time period is an advantage. I have also, however, pointed out that, on the other hand, there is a risk that the maximum time period for processing could become the “standard period” with consequences for, for example, news journalism.

The forms for disclosure of official documents are often similar. The normal procedure is to receive a document in the form of a copy or a printout. The question of the fee that may be charged is crucial for the opportunity for many people to utilise their rights in this area. In general, a principle of prime cost applies, linked to the reproduction of the documents themselves. For example in the United Kingdom, however, it is also permitted to take payment for the time and work that goes into producing a document.

It is regarded as self-evident in most countries that there must be the opportunity to appeal decisions to refuse to disclose a document. In a number of countries, special review bodies have been introduced. In France, a person who is dissatisfied with a decision can turn to a special commission, which is a precondition for being able to further appeal to the courts. In the United Kingdom, there is the Information Commissioner’s Office.

The laws and bills I have studied are often ambitious. How the application of the laws works is another matter. Since in many cases it is a question of recent legislation, it is obvious that time is necessary in order to produce detailed principles through case law. Nor has there been much opportunity for bringing in knowledge from the outside in the form of exchange of experiences with countries that have longer traditions, apart from Sweden
and a handful of others. One crucial precondition for the functioning of the many laws that now exist is that there is continuing political support, not only when it is a question of making necessary adjustments in the regulations when deficiencies in them are obvious, but also in the form of education and training of public officials in issues of attitude and how the role of a civil servant is to be perceived. Non-governmental organisations often play a significant role in this respect. There are many examples of how civil society works consciously, and often successfully, through these. A couple of examples are Bulgaria and Scotland, where non-governmental organisations have collaborated in training government agency employees, and pilot cases have been taken to court and other review bodies.

As has been observed, the Principle of Public Access to Official Documents is accepted in almost all of Europe. Development so far outside Sweden has occurred over the course of several decades. It has chiefly been marked by the individual states’ desire to establish good relationships between citizens and public authorities, rather than by any pressure from outside in the form of international cooperation. International cooperation these issues has begun, however, even if so far it has not resulted in specific multilateral binding commitments for the states in areas other than the environment.

**International cooperation on the Principle of Public Access to Official Documents at national level**

I. The Council of Europe

Since the end of the 1970s, discussions have been in progress within the Council of Europe with an eye to common principles on public access to official documents in the member states. A 1976 attempt by the Parliamentary Assembly of the Council of Europe to induce the member states to introduce a right to seek information into the European Convention for the Protection of Human Rights was unsuccessful. There was a new, unsuccessful attempt by the Parliamentary Assembly in 1979 at the same time as it recommended to the Committee of Ministers of the Council of Europe to both encourage the member states who had not already done so to introduce a system of access to government files, and to see to it that a complete study regarding access to such documents was conducted by one of the Council of Europe’s expert groups. Thereafter, in 1981, the Com-
the Committee of Ministers adopted a recommendation on access to information held by public authorities.\textsuperscript{13}

The preamble to the recommendation stresses the importance of the general public in a democratic society obtaining adequate information on public issues, and that access to information is likely to strengthen confidence of the public in the administration. A handful of principles were established: all individuals and legal entities shall have the right, upon request, to obtain information held by public authorities, although not legislative bodies or courts. Effective and appropriate measures shall be provided to ensure access to information. Access to information shall not be refused on the grounds that the requesting person has not a specific interest in the matter. Equality must prevail in the disclosure of information. Only limitations of access to information of the kind that are necessary in a democratic society to protect certain public or private interests may be allowed, although consideration must be made of whether a person is personally affected by the information. A request for information shall be accepted or rejected within a reasonable time; if disclosure is refused, reasons for this must be given and it must be possible to have a refusal of this kind reviewed. The recommendation does not distinguish between information in documents and other information.

After the 1981 recommendation, seventeen years passed before a new step was taken as regards international cooperation concerning rules at national level about the right to access to information, namely through the 1998 Århus Convention (see below in the section on the UN). Development within the Council of Europe continued through a recommendation on public access to official documents that was adopted by the Committee of Ministers in 2002.\textsuperscript{14} The work on preparing the proposal for this recommendation was begun in 1996, in an expert group under the Steering Committee on Mass Media. When it became clear to the Steering Committee that the expert group did not intend to propose special privileges as regards access to information for journalists, the task was transferred in 1997 to a specialist group under the Steering Committee for Human Rights. According to the terms of reference for this specialist group, it was to study the opportunities to draw up proposals for either a binding instrument – that is, a convention – or other measures for fundamental principles on access for the public to information held by public authorities.\textsuperscript{15} The specialist group, which consisted of some fifteen representatives from various member states (myself included) and other bodies such as the European Commission, would take the earlier recommendation from 1981 into consideration, as well as the development of legislation in the member states and at “the European level”. After having discussed a number of the
principles that were regarded as necessary for inclusion in an instrument, the specialist group preferred drawing up a recommendation to a convention because a non-binding instrument could indicate sharper and clearer principles of a minimum character, which would be of benefit for the states who, at that point, were beginning to or planning to legislate in the area. In this situation, the specialist group had also demonstrated that the European Convention for the Protection of Human Rights did not include any general right of access to official information. From a Swedish point of view, a recommendation was preferable at that time as there were fears that a binding instrument could include requirements for limitations of Swedish public access regulations.

In contrast to its predecessor from 1981, the recommendation is expressly limited to official documents, but like its predecessor, a number of principles for public access are established. These are more detailed, covering such aspects as a comprehensive enumeration of possible limitations of public access. The principles are explained in more detail in the explanatory memorandum to the recommendation through, for instance, examples from the application of national regulations.

The recommendation opens with definitions. It first indicates what is meant by “public authorities”: the government and administration at the national, regional and local levels, as well as natural or legal persons who perform “public functions” or exercise administrative authority. Further on, “official documents” are defined as all information that is recorded in some form, that has been drawn up by or received and is held by public authorities and is linked to some public or administrative function; with the exception of documents under preparation. It is no exaggeration to assert that the recommendation’s definition of official documents has been influenced by the corresponding definition in the Swedish Freedom of the Press Act.

The recommendation relates only to official documents held by government and administrative authorities. Member states are encouraged, however, to examine the extent to which the principles could be applied to legislative bodies and judicial authorities. A general principle on public access to official documents is established: “Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.” The latter involves no great difference compared with the 1981 recommendation, according to which the right to information would apply to everyone under the jurisdiction of the member state. As I have already mentioned, special treatment based on citizenship is found in the legislation of several countries, even in laws that
came into being after the 1981 and 2002 recommendations; this legislation therefore is in contrast to them both.

The limits that are regarded as permissible in accordance with the 2002 recommendation are indicated in a comprehensive enumeration of the public and individual interests worthy of protection. These limits must be precisely indicated in law, must be necessary in a democratic society and proportionate to their purpose. Access to a document may be refused only if disclosure of the information in it could damage a permitted protected interest if – and here follows an additional limitation of the opportunity to refuse disclosure, despite the fact that damages could be triggered – there is an overwhelming public interest in the information disclosed. The member states are encouraged to consider maximum time limits for secrecy.

The interests that, according to the recommendation, may be protected through an exception in public access to official documents are as follows:

- National security, defence and international relations
- Public safety
- Prevention of, investigation and prosecution on criminal activities
- Privacy and other legitimate private interests
- Commercial and other public or private economic interests
- Equality of parties concerning court proceedings
- Nature
- Inspection, control or supervision by public authorities
- The economic, monetary or exchange rate policies of the state
- Confidentiality of deliberations within and between public authorities during the internal preparation of a matter.

On the whole, the enumeration of interests worthy of protection coincides with the corresponding list in Chapter 2, Article 2 of the Swedish Freedom of the Press Act, though with a couple of important additions in the recommendation. “Equality of parties concerning court proceedings” is indicated as a particular interest worthy of protection. The purpose of secrecy for the protection of this interest includes, but not exclusively, protecting government agencies from disclosing their own documents so as not to weaken their position in legal hearings. Swedish legislators have chosen to protect this interest partially under the umbrella of another protected interest, namely the general public’s economic interests.

According to Chapter 19, Section 9 of the Public Access to Information and Secrecy Act, secrecy applies to information that has been produced by or been obtained on behalf of an authority owing to that authority’s – or a state or municipal corporation’s – legal dispute, if it can be assumed that disclosure of the information would be detrimental to the position of the public or the corporation as a party. Note that this secrecy applies in the authority in its capacity as a party, not in the courts which receive the information owing to the proceedings. A number of secrecy provisions apply in Swedish courts, but they do not aim at equality between the parties in proceedings.
Another protected interest in the recommendation, but not found in the catalogue of the Freedom of the Press Act, is confidentiality during hearings within or among public authorities during the internal preparation of a matter. This does not mean that such information is not protected according to Swedish law; another form for exceptions has been constructed in the Freedom of the Press Act through documents not being qualified as official if they have the character of memoranda or intermediary products (Freedom of the Press Act 2:9). According to the recommendation, applications for access to an official document can be made without indicating reasons for the request. Furthermore, formalities concerning applications must be kept to a minimum. If an authority refuses to disclose a document, the decision for refusal must be justified. These principles are entirely in line with Swedish legislation. It was not difficult to gain acceptance for them in the discussions during the drafting of the recommendation. The only country that had problems with it was Italy, where individuals who request information must have some form of party or other particular interest in accessing the information.

It should be simple to request documents, and the authority that has the document must be obliged to process a request to obtain documents quickly, within any established timeframe. The discussion on time limits was not entirely simple. It could, as I previously asserted, be an advantage to have a guarantee that processing will be concluded within a certain period of time, especially in countries where the mechanisms of deliberation and supervision are not effective, even though there is a risk that the maximum processing period becomes the standard processing period.

There is a further exception from the right to have access to documents which is indicated in the principles of the recommendation for processing applications, namely the opportunity to refuse disclosure if a request is obviously unreasonable. Given as an example in the explanatory memorandum is the fact that the application is unclear or unspecified, or requires disproportionately comprehensive searches, or relates to an area that is too broad or to a number of documents that is too great. Further on, it states that applications that are a clear abuse of the right should also be rejected. One example given is the application being one of many intended to interfere with the normal work of an authority, or constituting an unnecessary repetition of an identical application by the same applicant. A number of these grounds for rejection – for example, rejecting an application owing to the fact that it encompasses a large number of documents – cannot be applied in Sweden. Furthermore, even if it were permitted to reject repetitive applications, the Swedish right to anonymity means that it is not always possible to know whether this is actually the case.
As regards the forms for disclosure of documents, it is stated that a document must either be presented in its original version where it is being kept or disclosed in the form of a copy, in accordance with the preference of the person requesting the document. Furthermore, a document that is only partially secret must be disclosed in its remaining parts, with the excluded parts clearly indicated. Thus far, the recommendation corresponds with Swedish rules. There is, however, an additional alternative to disclosure indicated: if the document is easily available through other sources, the authority may refer the applicant to them. The explanatory memorandum states that this refers, for example, to material published on the internet. Disclosure of a document on the spot must, in principle, be free of charge, whereas the public authorities may levy reasonable charges for copying that do not exceed the prime cost to the authority.

The recommendation establishes that there must be an opportunity for review when a request for disclosure has been rejected. A review of this kind shall take place in the courts or some other impartial instance established in accordance with provisions of law. An applicant should always have access to a quick, inexpensive review either in a special review body or through review at the authority that made the original decision to reject. This also applies regarding decisions to reject requests by legislative bodies, but as noted this is not included in the “mandatory” fields of application in the recommendation.

The recommendation concludes with an enumeration of complementary measures that are to be taken in order to ensure impact for the Principle of Public Access to Documents. Information on rights for the public, training of public officials and other measures for ensuring opportunities for the public to exercise their rights all belong here. For these purposes, public authorities must have effective document management that makes documents easily accessible; they must apply clear, fixed rules for preservation and destruction of documents and keep public registers. Public authorities are also instructed to work actively on publishing information.

In my opinion, these concluding recommended measures are of crucial significance for the effectiveness of the Principle of Public Access to Official Documents. My experience is that many countries that have succeeded in attaining satisfactory rules for public access to documents in a narrow sense, fail in their practical application owing to deficiencies regarding registration, filing and other measures for managing the authorities’ archives. Similarly, poor knowledge among the public and the authorities about rights and obligations is often the cause of deficiencies as concerns the application of the regulations.
The year after the recommendation was established, the Committee of Ministers of the Council of Europe took a decision – in light of the recommendation – to evaluate national legislation on public access to official documents for the purpose of studying whether a binding instrument was feasible in this field. The specialist group that had drafted the proposal for the recommendation was tasked with this and began its work in September 2003. Previous Swedish fears that a binding instrument could result in requirements for restrictions to the Swedish publicity principle had decreased in light of how relatively simple it had been to produce principles in the recommendation that involved no threat to Swedish legislation in this field.

In the discussions that led to the specialist group advocating the preparation of a convention, despite the fact that a relatively short time had passed since the recommendation was adopted, the group came to the conclusion that it was necessary to strengthen the Principle of Public Access to Official Documents as soon as possible, and that the content of the recommendation at that time constituted a common basic standard. It was stated that since personal information is protected by the Council of Europe Convention on Data Protection, it would be reasonable to attain a balance between the right of public access to official documents and protection of personal data through the former also becoming the subject of a binding instrument. It was also noted that, at that point in time, many member states of the Council of Europe were bound by the rules on public access to documents in the Århus Convention. The opportunities discussed as regards the choice of binding instrument were either to prepare a special convention on the subject or a supplementary protocol to the European Convention. The latter alternative was abandoned in favour of a special convention, for the following reasons. A supplementary protocol could not cover all rights described in the recommendation, which were intended to be transferred to the convention. The instrument had to be flexible in regard to the fact that national administrative solutions adopted to incorporate public access to official documents varied. It would not be possible to prescribe positive obligations for the states in the European Convention. The process of adopting a supplementary protocol would be long and complicated, and the review machinery of the European Court of Human Rights was unwieldy.

After six years of discussion, the Convention on Access to Official Documents was adopted by the Council of Ministers in 2009. It contains minimum rules, and is largely designed in the same way as the 2002 Recommendation. There are differences, however. Disciplinary investigations and “communication with the reigning Family and its Household or the Head of State” have been added to the list of protected interests that may
justify secrecy. Furthermore, it is not only the equality of parties to court proceedings that may be protected, but also “the effective administration of justice”. Instead of “nature”, it is “the environment” that constitutes a legitimate protected interest. A welcome opportunity on Sweden’s part is allowing that the applicant has the right to remain anonymous. This provision however is not mandatory.

One issue that gave rise to difficult discussions in the specialist group was the “prime cost” principle in connection with reproduction of documents for disclosure. This was a central issue for the United Kingdom, since they also charge for the work itself of producing the material. As a compromise, it was stated that the fees should be reasonable, and not exceed the actual cost of reproduction and disclosure or delivery.

The Convention contains provisions for supervision of its observance. This shall take place inter alia through the Council of Europe of Specialists on Access to Official Documents Group reporting on legislation and case-law among the parties to the Convention (international organisations can join as well as states) and expressing itself on issues concerning the application of the Convention.

The Convention will enter into force when ten member states of the Council of Europe have ratified it. So far it has been ratified by seven states: Sweden, Bosnia and Herzegovina, Hungary, Lithuania, Montenegro, Norway and Finland.

II. The European Convention

Freedom of expression is guaranteed in the European Convention through Article 10, according to which, “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.” On several occasions, in cases regarding the issue of obtaining information by virtue of freedom of expression as it is guaranteed through Article 10, the European Court of Human Rights has rather categorically stated that the convention does not contain a general right for everyone to have access to information from public authorities upon request. Recently, however, some decisions have been made indicating that a relaxation of this attitude is under way.

The first decision concerning whether Article 10 contains a right to have access to information from a public authority was taken by the European Commission of Human Rights in 1974 in the case *Sixteen Austrian Communes and Some of Their Councillors v Austria*. The appellants asserted
that Article 10 had been violated through them being refused information on a decision to reduce the number of communes in Lower Austria. The Commission regarded the complaint as a demand for access to information that was normally not available to the general public but should have been furnished to the appellants in their capacity as members of the municipal executive boards of the respective appellant communes. The Commission found that Article 10 did not give public officials a greater right to access information than other individuals.

The European Court of Human Rights has since clarified that the right to freedom of information in Article 10 applies to those wishing to receive information that others are willing to impart. In the 1987 case of Leander v. Sweden, which concerned issues such as whether the appellant had the right of access to information that had been recorded about him in a personnel control matter, the European Court stated that freedom of information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. But, the Court continued, Article 10 does not confer on the individual the right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual.

The European Court adhered to this position in Gaskin v. United Kingdom. In this case, it was a question of whether the appellant had been refused access to information from case records held by the social services which had been established in connection with his earlier placement in a foster home. The Court did not consider that a violation of the appellant’s freedom of information had occurred. It found, however, that the rights of the applicant according to Article 8 in the convention, in respect of his family and private life, had been violated. The Court argued that a person in the applicant’s situation had a vital interest in receiving the information necessary to know and to understand his childhood and early development. The Court reminded the parties that, on the other hand, confidentiality of public records is of importance for receiving objective reliable information, as well as to protect third parties. The British system, which made access to the registers dependent on consent of the contributor of information, was regarded in principle to be compatible with the obligations under Article 8. But since the British system did not offer any opportunities to have the issue of disclosure ultimately determined by an independent instance when the person submitting confidential information did not consent there had been a violation of Article 8.

Guerra et al. v. Italy concerned complaints from inhabitants of a town where a chemical factory released substances that were hazardous
to health. Apart from the complaints that the emissions were hazardous, the applicants stated that the authorities had failed to inform the public about the dangers and the procedures to be followed in the event of an accident. Referring to the ruling in *Leander*, the Court was of the opinion that freedom of information, under conditions such as those in this case, could not be interpreted as entailing any positive obligations for the state to collect and disseminate information of its own motion. Article 10 was therefore not applicable in the case. Article 8, however, was considered to apply and the Court stated that severe environmental pollution may affect the wellbeing of individuals and prevent them from enjoying their homes in such a way as to affect their private and family life adversely. In the case in question, the applicants had to wait until the production of the hazardous substances came to an end before they were given information that would have enabled them to assess the risks they and their families were exposed to if they continued to live in the town. Not submitting relevant information meant that the state had not fulfilled its obligation to ensure the applicants’ right to respect for their private and family life. There had therefore been a violation of Article 8.

In *Roche v United Kingdom*, the Court found that Article 8 had been violated, since the applicant had been refused access to information on the gas experiments he had been exposed to at a military facility. The Court repeated its earlier conclusions from *Leander*, *Gaskin*, and *Guerra* that there were no positive obligations under Article 10 to disseminate information.

The case of *Sdružení Jihočeské Matky v Czech Republic* concerned complaints under Article 10 from a local environmental organisation that had been refused information on a nuclear power facility. The applicants stated that despite there being provisions in national law about the right to information, the national authorities had limited this right in an arbitrary manner. In the applicants’ case, the Czech authorities – despite there being rules about public access to documents – had applied a provision in construction legislation whose conditions for disclosure of documents stated that there had to be a legitimate interest in the information. The European Court referred to its earlier case-law on freedom of information, stating that it was difficult to deduce a general right of access to administrative documents and information from Article 10. The Court verified that the applicants had requested access to administrative documents from the authorities that were available under the conditions indicated in construction legislation – conditions which had been questioned by the applicants. Under these circumstances, the Court was of the opinion that the rejection of the request constituted a restriction of the their rights to receive information pursuant to Article 10. Thereafter, the Court assessed the limitation
of the rights in accordance with national law, and came to the conclusion – applying the legitimate limitations in Paragraph 2 of Article 10 – that the restriction of the rights in the applicants’ case was not disproportionate in relation to its purpose. The complaint was thereafter rejected as manifestly ill-founded. What makes the decision particularly interesting is that it was made in light of the fact that in the state concerned, there are rules on public access to documents, and that to all appearances this meant that Article 10 was applicable. This was not considered to be the case in Leander.

The first case in which the European Court found a violation of Article 10 as regards a refusal to disclose documents from a public body is Társaság a Szabadságjogokért v Hungary.28 The background was as follows: A member of the Hungarian Parliament had complained to the Constitutional Court, demanding that the consistency with the Constitution of certain changes to criminal law regarding narcotics crimes be reviewed. The applicant, which was a civil rights organization active in matters concerning drug policy, requested to be granted access to the MP’s complaint from the Constitutional Court, referring to the rules on public access to documents. The purpose of studying the document was to use it for a public debate on drug policy. After access was refused, the issue was reviewed in the general courts, who found that disclosure could not occur without the approval of the person who wrote the letter of complaint (the MP) because it contained personal data.29 The European Court tried the organisation’s complaint under Article 10. In substance, the Court stated as follows: The public has the right to receive information of general interest. The Court has established this in its development of case-law in relation to press freedom. The Court must be particularly vigilant as regards measures by national authorities which are capable of discouraging the participation of the press – as one of society’s “watchdogs” – in the public debate on matters of legitimate public concern. Arbitrary restrictions in law cannot be allowed when they may become a form of indirect censorship should the authorities create obstacles to the gathering of information. The gathering of information is an essential preparatory step in journalism, and an inherent, protected part of press freedom. The function of the press includes the creation of fora for public debate. This function, however, is not limited to the media. The purpose of the applicant’s activities can be described as an essential element of informed public debate. The important contributions of civil society to the discussion of public affairs has been acknowledged by the Court. The applicant was an organisation involved in human rights litigation with various objectives, including protection of freedom of information. It may therefore, like the press, be characterised as a “public watchdog” and should thereby be ensured the same protection as the press under the Convention.
The Court was of the opinion that the applicant, by requesting the MP’s complaint, was legitimately gathering information on a matter of public importance, and that the authorities interfered in the preparatory stage of this process by creating an administrative obstacle. The informational monopoly of the Constitutional Court therefore constituted a form of censorship. Since the applicant intended to impart the information to the public, thereby contributing to the public debate concerning legislation on drug-related offences, its right to impart information was clearly impaired. The freedoms of expression and of information in Article 10 are not absolute, but they may be restricted if certain preconditions are met. One precondition is that the restriction has a legitimate aim. One such aim is the protection of the rights of others. In Társaság a Szabadságjogokért, the European Court accepted the fact that the protection of the rights of others – in this case, the MP’s right to protection of personal data, was a legitimate aim for the restriction. The Court was of the opinion, however, that the interference was not necessary in a democratic society, and the applicant’s freedom of information had thereby been violated. With that, the Court referred to the fact that the document requested was ready and available in the Constitutional Court, and that it therefore did not require any collection of any data. The state, in this situation, had an obligation not to impede the flow of information sought by the applicant. The Court also stated that it was quite implausible that any references to the MP’s private life could be discerned from the document requested. In this connection, the Court also stated that it would be fatal for freedom of expression in the political sphere if public figures could censor the press and public debate in the name of their personality rights, alleging that their opinions on public matters are related to their person and therefore constitute private data which cannot be disclosed without consent. These considerations could not justify the interference made in this case. Obstacles created in order to hinder access to information of public interest may discourage those working in the media, or related fields, from pursuing such matters and as a result they may no longer be able to play their vital role as the “public watchdogs” and their opportunity to provide correct and reliable information may be negatively affected.

The European Court has also handled the issue of refused access to documents after national authorities had determined that disclosure of documents shall take place. Kenedi v Hungary concerns a historian who was refused access to certain documents from the Hungarian Ministry of the Interior. Despite the courts having given him the right to unrestricted access to the requested documents – that is, without the restrictions the Ministry had drawn up as conditions for disclosure – the Ministry refused
to hand out all the requested documents. Here, the European Court stated that access to original documentary sources for legitimate historical research was a fundamental element of the exercise of the applicant’s right to freedom of expression. The Court argued that the requirement in Article 10, Paragraph 2 that a limitation of this right must be prescribed in law had not been met owing to the authorities’ obstinate reluctance to comply with the execution orders was in defiance of national law and arbitrary. A misuse of power of this kind by the authorities cannot be characterised as a measure “prescribed by law”.

In the case of Youth Initiative for Human Rights v Serbia the applicant – a human rights organisation – had, after appeal, been given the right to access information from the national intelligence agency regarding how many people had been the subject of electronic surveillance in a given year. Despite this, the intelligence agency refused to disclose the information, with the justification that they did not hold it. In line with what was stated in Kenedi, the European Court held that since the applicant was obviously involved in the legitimate gathering of information of public interest with the intention of imparting it to the public and thereby contributing to the public debate, its freedom of expression had been infringed. The Court was not convinced by the argument that the authority did not hold the requested information, drawing the conclusion that its obstinate reluctance to execute the decision of the Information Commissioner was in defiance of national law, and was arbitrary. The applicant’s freedom of expression pursuant to Article 10 had thus been violated.

A further case in which the applicant was an organisation is Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v Austria, in which a not insignificant portion of the ruling is made up of the applicant’s name. The applicant organisation was occupied with research and studies on the transfer of agricultural land and forest, for the purpose of drawing conclusions about the societal impact of these transfers. They also expressed opinions on draft laws in their area of interest. The applicant had requested all decisions taken by the Tyrol Real Property Transaction Commission over a four-month period. According to the applicant, the decisions would be anonymised, and the costs of providing them could be reimbursed. The Commission refused access, justifying themselves by stating they lacked time and personnel. The European Court, which found that the applicant’s freedom of information had been infringed with similar reasoning as in the aforementioned Hungarian and Serbian cases, considered it remarkable that the requested decisions were not easily available at the Commission. The Court did not consider the national authorities’
reasons for refusing disclosure to be sufficient, although they were relevant. The conclusion was that there had been a violation of Article 10.

In a judgment from 2015, *Guseva v Bulgaria*[^33], the European Court found that Article 10 had been violated when a national court had found for the applicant when she appealed decisions to refuse her information, but these decisions had not been enforced. What distinguishes this from the previous cases is that the appellant could not be said to be a “public watchdog” in the same way that earlier caused the Court to grant special privileges as regards rights under Article 10 to organisations working in the public interest. The Court attached importance, however, to the fact that the applicant had been obstructed in her preparations, as a member of an animal rights organisation, to inform the public of conditions in order to prevent cruelty to animals and to create debate around them.

A case against Sweden that has a certain bearing on the Principle of Public Access to Official Documents is *Gillberg*.[^34] The core issue in the case concerned whether the applicant, in his capacity as a public official (researcher at the University of Gothenburg), had an independent negative right pursuant to Article 10 to not make available research material that belonged to the university, despite its intent to follow the decision of the administrative court to disclose the material on certain conditions. The Court established that Article 10 was not applicable in the case. It was not of the opinion that the applicant had a negative right of this kind, among other things due to the fact that a right of this kind would violate the right to receive information, pursuant to Article 10, of individuals who had been given access to the material in its capacity as official documents.

According to the judgments and decisions referred to, the case-law of the European Court as regards the Principle of Public Access to Official Documents appears to have developed since the court previously – and as late as in *Roche 2005* – established that Article 10 does not entail a general right to have access to the authorities documents. It should be recalled, however, that in the Grand Chamber the Court has not yet ruled in any case in which it has abandoned this principle. It can also be pointed out that the development in the European Court has led to problems in interpretation at the national level. Lord Mance, in a ruling from the British Supreme Court, states[^35]: “What to make of the Strasbourg case law... is not easy. One possible view is the various Section decisions open a way around the Grand Chamber statements of principle in circumstances where domestic law recognises or the European Court of Human Rights concludes that it should, if properly applied, have recognised, a domestic duty on the public authority to disclose the information. The Österreichische case might perhaps be suggested to fit into this pattern, though it does not appear to have
represented any part of the First Section’s thinking. Alternatively, the Österreichische case may be regarded as a special case… That said, the logic is not very apparent of a principle according to which the engagement of Article 10(1) depends upon whether domestic law happens to recognise a duty on the relevant public authority to provide the information.”

In more recent cases, where a violation of Article 10 has been established, the applicant has either been a non-governmental organisation or a researcher. Parallels have been drawn to the role of the press for freedom of expression. It must thus be a question of acquisition of information that takes place for further dissemination for the purpose of contributing to a debate on an issue of public interest.

As the European Court has established that, in certain situations, not disclosing information from public authorities entails a violation of freedom of expression, and that Article 10 is therefore in fact applicable, the Court has also opened up for reviewing whether the restrictions of this right that may be applied are permitted pursuant to the Paragraph 2. Requiring the restrictions of the freedoms pursuant to Article 10 to be prescribed in law agrees with the conditions of the Swedish Freedom of the Press Act for restrictions of public access to documents (Chapter 2, Section 2, Paragraph 2), and with the Council of Europe’s recommendation from 2002 and its Convention in the domain. Also, the enumeration of the legitimate interests for the protection of which the freedoms under Article 10 may be restricted is rather uncontroversial. It is a fact, however, that Article 10 may prove to be limiting as regards the opportunities to protect such things as nature, the environment and the public economic interests.

There is a case in the European Court that has been relinquished to its Grand Chamber without a preceding decision at the ordinary chamber level: Magyar Helsinki Bizottság v Hungary. At the time of writing the case has not yet been decided. Oral proceedings recently took place. The applicant is a non-governmental organisation that was refused access to documents from the Hungarian police stating the name of those appointed as public defenders. The applicant invokes Article 10, asserting that the refusal to disclose the documents has impeded its watchdog function of expressing critical points of view on the prevailing system of appointing defenders.

In substance, my presentation deals with public access to documents. I would like, however, to mention something about how the European Convention relates to the other cornerstones of the Principle of Public Access to Official Documents: freedom of expression for public officials, freedom of communication and public access to hearings.

The Swedish system of responsibility within freedom of the press lacks a direct counterpart in other countries. The European Court approaches
the freedoms of expression and of information in part from other starting points. In general, the concept of freedom of communication, in its meaning according to the Swedish Freedom of the Press Act, is not found in the vocabulary of the Court. The Court has repeatedly stated that freedom of expression in Article 10 also applies to employees, but at the same time they have an obligation of loyalty and an obligation towards their employer to be discreet and restrained. Furthermore, it maintains that these obligations are of particular importance as regards civil servants, since it lies in the nature of the authorities that their public officials are bound by a duty of loyalty and discretion. The Court has not developed what this involves in practice. Loyalty towards a private employer is usually directed towards a proprietary interest, but as regards public authorities and other public bodies, there is no corresponding interest. The duty of loyalty of public officials towards their employer can hardly be questioned in itself, but in this case the employer – in a broader sense – is the general public. In some cases relating to employees who acted as whistle-blowers and journalists who have revealed unsatisfactory conditions, the Court has laid down certain points of departure for assessing whether reprisals against such individuals who publicise information have been consistent with Article 10 of the Convention. These points of departure are: public interest in the information, the veracity of the information, any damage to the employer, the purpose of disclosing the information and how serious the sanction against the person disclosing the information is. An additional criterion, foreign to the Swedish freedom of communication (in any case as regards public officials), is whether publication occurred as a last resort after the employee had already approached their superiors or some other authorised instance.

Public access to hearings – that is, the right of the public to be present during court hearings and meetings in political decision-making assemblies – is not regulated in the European Convention. Public hearings as a part of a fair trial, however, is regulated in Article 6, according to which “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”
The main part of the Court’s case-law as regards Article 6 concerns the criteria for fair trials, such as the impartiality of courts and the length of proceedings, as well as the definition of what is a “civil” right. Complaints regarding the right to oral hearings concern the possibility to have a hearing at all, rather than the admission of the general public to them. Only the person who is, or has the right to, be a party in a case has the opportunity to submit complaints as regards the public nature of hearings pursuant to Article 6. The same applies to the publication of rulings. No principle of public access, in the sense that the general public is assured an independent right to be present during trials or to have access to rulings concerning third parties, can thus be inferred from Article 6.

**III. The UN**

According to Article 19, second paragraph of the UN International Covenant on Civil and Political Rights, which entered into force in 1976, everyone has the right to freedom of expression. This right includes the freedom, regardless of frontiers, to seek, receive and impart information and ideas of all kinds orally, in writing and in print, in the form of art or through any other media of his choice.

Article 19 of the Covenant is worded differently from Article 10 of the European Convention. Freedom of information according to the European Convention covers a “freedom to receive... information”, whereas the Covenant also grants the right to “seek information”. As previously mentioned, the Inter-American Court of Human Rights has read a right of public access to documents into Article 13 on freedom of expression in the American Convention on Human Rights. Like Article 19 in the Covenant, Article 13 in that Convention contains the wording “the right to seek information”.

There is no court established in the UN system. Instead, the United Nations Human Rights Committee acts as a monitoring mechanism. In its General Comment No. 34 (2011), the Committee states the following on Article 19 of the Covenant and the right to access information. Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. To give effect to the right of access to information, states parties must proactively put in the public domain Government information of public interest.
“Everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 19 of the UN Universal Declaration of Human Rights

Necessary procedures must be established for how these rights are to be exercised. These shall prescribe timely processing of applications to gain access to information. Fees should not be such as to constitute an unreasonable impediment access to information. Reasons should be given when applications are rejected, and there must be an opportunity for appeal in such cases, and also in cases when applications remain unanswered.

Within the UN system there is also the Århus Convention, which was signed in 1998 and entered into force in 2001. It was prepared by some thirty states within the UN Economic Commission for Europe. The Convention aims at providing private individuals and associations with an active role in environmental issues through requiring that states parties ensure the public access to environmental information held by authorities and certain private bodies, the right to take part in decision-making processes that have an impact on the environment and the right of review of the authorities’ decisions on such issues. The Århus Convention thus consists of three main parts, of which access to information is one, and it applies to a limited sphere: the environment.

Considering that the UN Committee only as of late has commented on public access to documents as part of the Covenant, the Århus Convention must be said to be the first binding international instrument that aims directly at a right to access to information. The obligations of the Convention to disclose information have been incorporated into Swedish law through a special law on environmental information in certain private bodies and through changes in the Public Access to Information and Secrecy Act. In the part where the Convention obliges states to see to it that decisions to refuse access to environmental information are subject to review by courts or other independent and impartial bodies Sweden stated a reservation on the issue as regards decisions by Parliament, the Government and by cabinet ministers.
Transparency in international institutions

1. The European Court of Human Rights

The Council of Europe has worked for a relatively long period of time to convince its member states to accept principles and regulations for public access to official documents. The question is whether the organisation has worked in the same spirit to achieve similar principles and rules for its own activities – those of the European Court of Human Rights, for example.

The activities of the European Court are regulated in the European Convention and in its Rules of Court, which it establishes itself.

As regards hearings, Article 40 of the Convention states that hearings must be public, if the Court does not decide otherwise in exceptional circumstances. The exceptions are indicated in Rule 63.2 of the Rules of Court: the press and the public may be excluded from all or part of a hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice. These exceptions from public hearings are the same as in Article 6 of the European Convention.
The great majority of hearings held in the European Court take place in the twenty or so cases per year decided by the Court in Grand Chamber. The opportunities for hearings behind closed doors are very rarely used. It is unusual for the ordinary chambers to hold oral hearings.

Rulings in Grand Chamber cases are pronounced by the President of the Chamber in the presence of the parties and the general public. Other judgments and decisions are published on the website of the Court in one of the two official languages, French or English. The rulings in Grand Chamber cases are, however, translated and available in both languages. If the rulings contain information on sensitive personal circumstances, they are anonymised.

Documents other than rulings of the court may also be public. According to Article 40 of the Convention, documents that are presented to the Registrar are available to the public, if not otherwise stated by the President of the Court. This main rule is specified in Rule 33 of the Rules of Court. It indicates that all documents submitted by the parties or a third party in connection with an application – with the exception of documents deposited as part of friendly-settled negotiations – shall be accessible unless the President of the Chamber decides otherwise by virtue of the possible exceptions given. Access to documents of this kind may be refused if so required to protect the same interests indicated in the exceptions from public access to hearings.

It can be noted that public access is limited to documents that are deposited with the Court in the cases processed there. It thus covers neither documents drawn up by the Court itself – apart from rulings and decisions – nor documents that relate to the administration of the Court. It may seem remarkable that the secrecy exception is not mandatory. In all likelihood, the explanation lies in the traditional perception that public access to official documents is the exception, and secrecy is the primary rule.

There are no explicit rules on professional secrecy for the judges of the Court, but they are obligated to swear an oath or provide a solemn declaration to keep all deliberations secret (Rule 3 of the Rules of Court). No detailed criteria are indicated for guidance as to what this entails. It is self-evident that through this, the judges take it upon themselves not to reveal to outsiders what occurred during the deliberations on a judgment or decision. No other limitations are expressed; the conclusion should then be that either the green light has been given to speak externally about the internal circumstances of the Court, or that it is understood that anything that is not expressly permitted to discuss publicly must also be regarded as confidential. Presumably there are different interpretations of the matter.
and the question has not been brought to a head. My impression, however, is that confidentiality in general is regarded as the norm within the Court.

**II. EU institutions and the European Court of Justice**

The institutions of the EU can hardly be said to have been characterised by openness before the 1990s, but in 1997 a general Principle of Access to Documents was introduced into the Union and EC treaties through the Treaty of Amsterdam.

Before the Treaty of Amsterdam, certain steps had been taken towards openness, including through member states adopting a joint declaration on the need for increased openness and statements by the European Council on the need for increased transparency and openness in EU work. The decisions of the Council and the Commission in 1993 on rules on public access to the documents of their institutions had a tangible impact. Subsequently, in 1997, the European Parliament adopted similar provisions. The public right of access to documents according to these provisions was limited. The European Court of Justice, however, contributed to operationalising these principles in a number of cases such as regarding secrecy exceptions and justifications for refusal, that there was no obligation to justify a request for a document, the balancing between the interests of public access and secrecy and masking of confidential information, and disclosure of the remaining parts of classified documents. The clarifications by the Court of Justice often went in a relatively progressive and pro-openness direction. The fact remained, however, that the internal institutional rules had a limited area of application, for example the Council’s rules meant that only documents drawn up by the Council itself – and not documents received from other institutions, member states or individuals – were covered.

After joining the EU in 1995, it became possible for Sweden to contribute to the elaboration of the Treaty of Amsterdam, adopted in October 1997, through which a legal basis was created for binding provisions on public access to documents in the institutions of the EU, and subsequently to take part in the negotiations that led to the adoption of the EU Public Access Regulation.

In brief, the Public Access Regulation entails the following: all documents in the institutions are covered by the right of public to access – that is, both incoming documents and those produced by the institutions themselves (Article 2.3). The institutions must establish public registers of their documents (Article 11), the list of secrecy exceptions is to be ex-
haustive (Article 4.1–3) and documents that are partially classified shall be disclosed in their remaining parts (Article 4.6). Among the more negative elements from the point of view of openness are the fact that “sensitive documents” in the fields of defence and security policy are covered by special restrictions (Article 9) and that a member state may request that documents originating from that state not be disclosed without its consent (Article 4.5).

There is a detailed account of the background to the regulation and Sweden’s participation in the proceedings concerning it in a written communication from the Government to Parliament. It suffices to refer to this document for a detailed description of the contents of the regulation and the negotiations. Instead, I will provide a few personal reflections on Sweden’s approach to the issue, seen from my perspective as Sweden’s representative and, during Sweden’s Presidency of the EU in 2001, Chair of the Council working group that negotiated the regulation at the civil servant level.

When Sweden became a member of the EU in 1995, work on increasing openness in the institutions of the EU had been under way for several years, with member states such as Denmark and the Netherlands in particular forcing the pace. Both Sweden and Finland, which had joined the EU at the same time, had clearly-expressed ambitions of improving public access to institution documents. For Sweden, this ambition was not only a result of the general political perception that openness was positive, but also an expression of the unwillingness to risk limitations to openness at the national level. In light of the general movement within the EU at the time for increased openness at the national level – at that point in time, legislative projects were under way in the United Kingdom and Ireland, and had recently been concluded in inter alia Belgium – and with pro-openness Finland and Sweden as new members, there was momentum for carrying through significantly more progressive rules than existing ones.

This did not mean that there was not resistance from several countries against the proposed regulation, which was presented to the European Parliament and the Council by the Commission in January 2000. The proposal was a relatively good one from a Swedish point of view; Sweden had successfully managed to impact its contents. A significant majority of member states, based on the weight of votes in the Council (the regulation would be decided by qualified majority), were against the proposal for a long time. But a blocking minority turned out to be of equal value to a simple majority, and this minority succeeded in persisting until the end of the deliberations, when it finally could be turned into unanimity for the proposal in the Council and was adopted by a large majority in the Parliament. The Commission could have withdrawn its proposal at any time,
which would then fail, including the changes adopted by the negotiating parties. It was therefore a question of the Commission staying with the proposal, something that remained uncertain up until the very end.

The negotiations in the Council and in the Parliament were under way for just over a year, which in the context is not a remarkably long time. I am convinced that several of the countries that were initially opposed to the proposed regulation were reluctant to prolong the negotiations. They seemed to accept that the Swedish Presidency, which was forcing the pace, had the energy and will required to leave no stone unturned and thereby also take on board their misgivings, including that the regulation would lead to inefficiency and that EU institutions would become sieves for defence and security policy secrets.

What may also have contributed to the relatively quick conclusion of the negotiations was that the member states, on an issue where they were so polarised, were convinced that constructive ambiguities in the text of the regulation would be interpreted in the way they themselves perceived as correct in subsequent disputes before the Court of Justice. So far, both advocates and opponents of openness have been both right and wrong on different issues. One example that can be mentioned is Sweden and Turco v Council in which the Court of Justice stated that the Public Access Regulation in principle entailed an obligation to disclose an opinion from the Council legal service pertaining to a legislative procedure. In two later rulings, the Court distanced itself from the Turco ruling, emphasising that the particularly comprehensive principle of public access relating to legislative procedures is not automatically suited for matters of another nature. In these cases, it was an issue of review proceedings relating to state aid and ongoing court proceedings, respectively. The ruling in Bavarian Lager can also be mentioned, which concerned the relationship between the Public Access Regulation and the EU Data Protection Regulation. The Court interpreted the secrecy protection for personal integrity in Article 4.1b of the Public Access Regulation as meaning that the name of a participant in a meeting arranged by the Commission could not be disclosed without that person’s consent.

Sweden has often intervened in cases in defence of a pro-openness stance. One step in the direction of greater transparency was taken by the General court when it declared invalid the Commission’s decision, with reference to the protection for the purpose of investigations in Article 4.2 in the Public Access Regulation, to refuse access to an opinion made by the Commission on a draft order that France had notified as part of an informational process regarding certain technical standards and regulations. The General Court ruled that the Commission’s opinion had not been
made as part of an investigation, and, in the alternative, that even though the procedure should be regarded as an investigation, disclosure would not adversely affect its purpose – namely that a technical regulation must be consistent with EU law. On the contrary, the General Court argued, the member state concerned would perceive the disclosure as an additional incentive to ensure that the regulation is compatible with EU law.\(^{59}\) The ruling of the General Court has been appealed by France.\(^{60}\)

One reason that the proceedings on the Public Access Regulation could be concluded within a reasonable time despite fears of “incorrect” application may be that it stated that the Commission was to report on the implementation of the principles of the regulation just over two years after it became applicable and – if it was found suitable – propose a revision (Article 17.2).

In a report from January 2004, the Commission concluded that since no problems justifying an adjustment of the legislation over the short term had been revealed, and that case-law had not yet been developed, proposing any changes to the regulation at that time was not motivated.\(^{61}\) The Commission noted that the regulation had functioned remarkably well.\(^{62}\) Barely four years and a number of rulings from the Court of Justice later, however, the Commission felt it was time for a revision.\(^{63}\) A series of changes were proposed, including adaptations to the Århus Convention, gathering all relevant secrecy provisions into the Public Access Regulation, that a member state should not have the right of veto in disclosure cases regarding documents from that state and that the obligation to publish legislative documents on the internet should be strengthened. The Swedish Government perceived these proposed changes as positive.\(^{64}\) There were, however, parts of the proposal that the Swedish Government did not appreciate. According to the Government, the proposed definition of a document which meant that a requirement would be introduced that for documents to be considered drawn up by an institution they should have been formally transferred to one or more recipients, or in some other way registered or received by an institution, would result in fewer documents drawn up by the institutions would be covered by the term “document”. Furthermore, the Government considered that the proposal that an application, in certain cases, is to be reviewed according to the EU institutions’ provisions on protection of personal data would lead to less openness. Apart from the fears of decreased openness expressed by the Government, it can be mentioned that the proposal would also mean that certain categories of documents, including those in competition matters, would be exempted from the regulation’s field of application. The negotiations over these changes have stagnated in the Council and the Parliament.
In 2011, the Commission submitted a separate proposal for changes to the regulation owing to the Lisbon Treaty, which entered into force on 1 December 2009; in Article 15.3 (which is currently the legal basis for public access to documents) the principle of public access to documents is expanded to apply to all of the EU institutions, bodies and bureaus including, to a limited extent (only in administrative functions), the Court of Justice, the European Central Bank and the European Investment Bank. This proposal has not yet been adopted either.

As regards the Court of Justice, there is little transparency in their judicial activities. Apart from the obvious fact that rulings and decisions are public and are published, as are the Advocate General’s opinions, the public does not have any right of access to documents in the case files. In contrast to the European Court, there is no public access even to the documents submitted by the parties.

One case that illustrates the Court’s approach is Svenska Journalistförbundet v Council. The ruling in this case meant that the Council’s decision to refuse to disclose documents to Journalistförbundet according the rules on public access to documents then in force was declared invalid owing to the fact that the decision was deficient because it was not properly motivated, which was required according to Article 190 of the EC Treaty. Journalistförbundet thus won the case, and would normally be entitled to compensation for its litigation costs. During the trial, Journalistförbundet had published the Council’s submissions in an abridged version on the internet encouraging the public to send their comments to the Council’s agents. According to the Court, these actions “had as their purpose to bring pressure to bear upon the Council and to provoke public criticism of the Agents of the institution in the performance of their duties”. This, according to the Court, was in violation of its rules, which reflect a general principle in the due administration of justice according to which parties had the right to defend their interests free from all external influence, and particularly from influences on the part of members of the public. The actions of Journalistförbundet were judged to be an abuse of procedure, and the consequences were that the Council only needed to reimburse the association for two thirds of its costs.

Concluding viewpoints

Since January 2014 a new secrecy provision has been in force in Sweden – Chapter 15, Section 1a of the Public Access to Information and Secrecy Act, which means that Sweden has restricted public access within inter-
national cooperation, including the EU. Secrecy applies for information submitted from foreign bodies owing to binding EU legislation, or an agreement with another State or international organisation entered into by the EU or approved by the Swedish Parliament, if it can be assumed that Sweden’s opportunities to participate in the international cooperation referred to in the legislation or agreement would be impaired if the information were revealed. Freedom of communication applies, however, and is not restricted in any way.

In its proposal for the provision, the Government stated that on a number of occasions Sweden’s views that the original holder of information should not have right of veto as regards disclosure of information from Sweden had not been met with approval. Conflicts of this kind has previously been resolved through special secrecy provisions.68

The secrecy provision entailed a pragmatic solution for increasing international cooperation. At the same time, it reveals a failure as regards Sweden’s ability to pursue issues of openness. The Government points out that Sweden has actively worked for openness in international contexts, and consistently and successfully safeguarded the Swedish principle of public access to official documents.69 That may be so. But I wonder how much resources have been invested here? I do not doubt that there were, and are, general and particular directives to those who negotiate internationally on Sweden’s behalf, nor that these people are doing good work. But I wonder what level these negotiations are taken to when it starts looking dismal for openness. Are the cabinet ministers contacting their counterparts in other countries? And Sweden’s ambassadors, how are they working on these issues?

Nowadays, what does the Swedish declaration prior to entry into the EU that “Sweden welcomes the development now taking place in the European Union towards greater openness and transparency. Open Government and, in particular, public access to official records as well as the constitutional protection afforded to those who give information to the media are and remain fundamental principles which form part of Sweden’s constitutional, political and cultural heritage”. The laconic declaration in response of the member states at the time read: “The present Member States of the European Union take note of the unilateral Declaration of Sweden concerning openness and trasparency. They take it for granted that, as a member of the European Union, Sweden will fully comply with Community law in this respect.”

What was regarded as Swedish extremism not so long ago is today a generally accepted principle of public access. There are countries that go further than Sweden in various respects, especially as regards proactive
publication of documents. However, in the same way as for other preconditions for democracy, the principle of public access cannot be taken for granted but must be safeguarded in word and deed. Considering how this principle has developed in the world around us, there should be plenty of opportunities to struggle further in defence of openness and to stand up for the content of the Swedish declaration upon its entry into the EU.

At the same time, a strong voice is needed to pursue the issues of openness further and to counteract reactionary forces that still exist in many quarters among the member states of the EU and the Council of Europe and their institutions. For Sweden to be such a strong voice requires commitment from politicians and public officials whose job it is to safeguard the principle both at home and in international contexts. More of this is desired!
The Principle of Public Access to Official Documents in Europe

Notes

1 The terms “official documents” and “public access to official documents” are used here to describe all sorts of information that public authorities have a basic obligation to furnish in written form.


4 Loi no 78-753 du 17 juillet 1978 portant diverses mesures d’amélioration des relations entre l’administration et le public et diverses dispositions d’ordre administratif, social et fiscal.


6 Recommendation of the Committee of Ministers of the Council of Europe Rec(2002)2 on access to official documents.


8 SFS 2009:400.

9 Chapter 2, Section 12 of the Freedom of the Press Act: “immediately or as soon as possible”.

10 La commission d’accès aux documents administratifs – CADA.


12 Recommendation 854 (1979) on access by the public to government records and freedom of information.

13 Recommendation No. R (81) 19 of the Committee of Ministers to Member States on the Access to Information held by Government Agencies.

14 Recommendation Rec (2002) 2 on access to official documents, decided by the Committee of Ministers of the Council of Europe, 21 February 2002.

15 Decision of the Committee of Ministers at the 613th meeting, 18–19 and 23 December 1997: Terms of reference for the Group of specialists on access to official information (DH-S-AC).


17 Decision No. CM/858/03092003.


19 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No. 108, 28 February 1981.


21 November 2015.


26 No. 32555/96, GC, judgment 19 October 2005.
27 No. 19101/03, decision 10 July 2006. See also Grupo Interpres S.A. v Spain, No. 32849/96, decision of the Committee 7 April 1987, Decisions and reports 89.
28 No. 37374/05, judgment 14 April 2009.
29 The Hungarian law regulating public access to documents also contains provisions on data protection.
30 No. 31475/05, judgment 26 May 2009. See also Roşianu v Romania, No. 27329/06, judgment 24 June 2014.
31 No. 48135/06, judgment 25 June 2013.
32 No. 39534/07, judgment 28 November 2013.
33 No. 6987/07, judgment 17 February 2015.
34 GC, No. 41723/06, judgment 3 April 2012.
35 Kennedy v The Charity Commission, judgment 26 March 2014. The plaintiff in the case has complained to the European Court, where at the time of writing (November 2015) the appeal is under way: Times Newspaper Limited and Kennedy v United Kingdom, No. 64367/14.
36 No. 18030/11.
37 November 2015.
38 See e.g. Guja v Moldova (GC) with further references, No. 14277/04, judgment 12 February 2008.
40 SFS 2005:181.
41 Article 9, Access to justice.
43 Declaration (No. 17) in the Final Act of the EU Treaty on the right of access to information.
46 Commission Decision 97/632/ECSC, EC, Euratom.
50 C-353/99 Council v Hautala, ECR I-9565.
52 An exception for working material was made in the form of a secrecy exemption, and not defined out of the term “official document” as in Swedish legislation.
53 Government communication 2001/02:110 Account of the work prior to and during Swedish Presidency of the EU, first half of 2001, on public access to documents in EU institutions.
55 The regulation was decided by the European Parliament and the Council in accordance with the “co-decision procedure”.
56 Joined cases C-39/05 and C-52/05 P, judgment 1 July 2008.
57 C-139/07 Commission v Technische Glaswerke Ilmenau, ruling 29 June 2010, and joined cases C-514/07 P, C-528/07 P and C-532/07 P, Sweden v Association de la Presse Internationale, et al., ruling 21 September 2010.
59 T-402/12, Carl Schlyter v Commission, ruling 16 April 2015.
63 Shelved.
64 Memorandum of Facts 2007/08:FPM117.
The publicists and the freedom of the press
Some historical trials concerning freedom of the press

Carina Burman

The Gustavians

Upon his accession to the throne, Gustav III was hailed as an advocate of the Enlightenment, and he soon set about revising the Freedom of the Press Act. As was so often the case during the Gustavian period, this was done while lambasting the Age of Liberty, and the King was successful in portraying the revision as a step forward, despite the fact that it involved changes for the worse. This included the Freedom of the Press Act losing its character as a fundamental law. In his biography of the King, the historian Erik Lönnroth writes that the Act was “improvised”. Nevertheless, Gustav III saw to it that the Act was translated into French and sent to the ageing Voltaire, whose most widely-read book dealt with Charles XII (with whom the Enlightenment author had sought a post as secretary in his early youth). Voltaire paid tribute to Gustav III in a poem, and the royal happiness was complete.¹

Despite the King’s passion for the Enlightenment, Sweden had few authors who may be regarded as philosophes in the French sense. One of the exceptions was Johan Henric Kellgren (1751–1795), who fought for reason using both poems and journalism as his weapons. Kellgren is perhaps best known for his lyrical poem “Den nya Skapelsen” (The New Creation), but he was an energetic satirist who enjoyed taking his political and literary opponents down a peg or two. Political reactionaries, writers of pretentious trash and poor literary critics were among his favourite victims. Such attacks had to strike a balance, and sometimes worse punishments than literary vitriol threatened.

Even early on in his career, Kellgren had been in trouble. In an article in the newspaper Dagligt Allehanda in the spring of 1778, he mocked the newly-published literary journal Vitterhets och Granskings Journalen and amused himself by picking apart the efforts of author Adolf Fredrik...
Ristell. Kellgren criticised “the great number of critics of all classes, sexes and ages, learned and unlearned, clerks and laymen” who tried their hand as reviewers. His article bore the title “Oförgripeliga Anmärkningar” (Unassailable Observations) and consisted of enumerations, exclamations and gleeful thrashings. The following anecdote turns up as a part of the account:

During the time of Jean II, the first comedy in Sweden was performed. It dealt with the Passion of Christ. The centurion who stabbed Jesus in the side did it so naturally that the Saviour fell dead from the cross and broke the leg of one of the dancers. The irritated King John cut off the centurion’s head, but the audience, who thought that the centurion played his role best, cut off the head of King John.²

This note from theatrical history which Kellgren had borrowed from a French collection of anecdotes, was found far too carefree in its treatment of religion, and led to an indictment for blasphemy. It is not impossible that Ristell succeeded in bringing this about through his contacts with highly-placed individuals. The indictment was directed at Pfeiffer, who was the publisher of Dagligt Allehanda, and Kellgren’s good friend Carl Peter Lenngren, who claimed authorship in Kellgren’s stead. Perhaps they thought it wiser not to involve Kellgren, since his position as tutor had given him contacts close to the King.

A plea, likely a collaboration between Kellgren and Lenngren, referred to the fact that the passage was originally from a French text. In November, a verdict was nonetheless handed down in the magistrate’s court of “gross blasphemy against God”, and the trial was referred to the Svea Court of Appeal, which sent it back to the magistrate’s court in April 1780. Two writers met in this case, because the poet and judge Johan Wellander wrote a so-called ‘votum’, characterised by moderation. It is not irrelevant that Kellgren, Lenngren and Wellander were all members of the literary society “Utile Dulci”, so the entire thing could be seen as a case of nepotism. The verdict of the magistrates’ court in the summer of 1780 was a fine of 100 silver riksdaler and a public apology. However, Lenngren appealed the decision, and eventually, the entire trial seems to have been forgotten.³

Five years later, at a meeting of Utile Dulci, Kellgren gave a eulogy to Wellander, in which he observes that Wellander, being a judge, had known
“that fanaticism and superstition, the advantages of officialdom and the jealousy of competitors are the natural enemies of every genius”. Kellgren also referred directly to the aforementioned case of freedom of the press:

If examples were to be given (I do not wish to search for them) where an author had been accused in Wellander’s court of having blasphemed against God when criticising an error in taste, one might find that despite the ridiculousness of that kind of accusation and despite the alleged enlightenment of the times, Wellander’s wise and reasonable voice had always been needed, though it was not always sufficient against an existing plurality to prevent a harsh and unreasonable verdict.4

A longer discussion in the eulogy is also devoted to freedom of the press, perhaps not only owing to Wellander’s action but also because theatre censorship had just been increased, and Kellgren himself had become one of the two theatre censors: “Freedom of the press, my brothers, is the inseparable right of a free people, and the clearest sign of a constitutionally organised government; but like every other freedom, easily leading to self-indulgence.”5 These words bear some reflection.

For a Gustavian author, publication often meant a balancing act between stating an opinion and avoiding indictments. For Kellgren, the indictment led to Dagligt Allehanda disbaring him. Instead, he became a main player in the newly-founded Stockholms Pos ten. Politically, he became more cautious: he had a tendency to emphasise that his criticism of religion and the clergy did not concern Swedish clergy, but for instance its French or Turkish counterparts. Nevertheless, he continued to engage wholeheartedly in literary feuds. Among his literary enemies was Thom as Thorild (formerly Thorén, 1759–1808), whose Sturm und Drang-inspired verse infuriated the classically inspired Kellgren.

Thorild did not possess Kellgren’s astute prudence. In the spring of 1784, he founded the periodical Den Nye Granskaren
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(《The New Reviewer》), and within only a few weeks, Thorild got into trouble with his article “Öfver tryckfriheten och samhällets styrka” (On Freedom of the Press and the Strength of Society). In it, he praised freedom of the press as “sacred to every citizen”. It was obvious to every reader that the periodical was radical, but Thorild himself did not realise which passages were dangerous. He nonetheless emphasised that freedom of the press constituted “the right of the people against the governing power, concerning the relationship of general freedom towards the great sacred compulsion of Government. And the least restraint of general enlightenment is an expression of despotism, an intimation of servitude!”

Thorild was called to the Chancellor of Justice and, like Lenngren a few years earlier, was sentenced to 100 silver riksdaler in fines – “as a criminal against the State,” he himself emphasised. In this case, there were additional consequences: Gustav III pushed through a new amendment to the Freedom of the Press Act which meant that only printers could publish periodicals.

Thorild continued to be a radical, both through his pre-Romantic literary ideals and his political opinions. He resided outside the capital for long periods and for a few years he lived in England. He did not meet with any real response to his desire for revolution, and in 1790 he returned to Sweden and recommended that Gustav III abolish the Parliament of the Estates. The growth of a “middle estate” – which would later become known as the “middle class” – and the increasing number of “non-noble persons of standing” meant that a large proportion of the Swedish people lacked representation in Parliament, but Thorild’s actions were nonetheless not very tactical. The two-chamber Parliament would have to wait for another 76 years.

After the death of Gustav III, the Freedom of the Press Act was liberalised in July of 1792. This meant relief for the more oppositional Gustavian authors. That autumn, Kellgren published a collection of socially critical aphorisms, “Philosophen på landsvägen” (The Philosopher on the Country Road), and Thorild had a number of his older tracts on freedom of the press printed under the title Om det allmänna förståndets frihet (On the Freedom of Public Reason). On 21 December, the printing of the manuscript was completed. That same day, Deputy Governor Liljensparre began his work...
to have Thorild jailed. The book was confiscated. The edition was 1,000 copies, but roughly a hundred books had already been sold and therefore avoided confiscation. The manuscript and the proofs were also handed over to the Court of Appeal. Already on 22 December, the Court had decided to detain Thorild.  

The indictment did not apply to the entire book, but only to the part entitled “Ärligheten” (Honesty), in which Thorild praises the new law of freedom of the press and describes the differences between the egotistical “I want” of the politician and the voice of honesty. This occurs amidst many exclamations and emotional expositions. He sees wise and mad as interchangeable, and utters such things as “If a crown is placed on a mortal and he is called KING, KING, does he become wiser for it?”  

Thorild handled his own defence in court and held long, seemingly improvised speeches. He seems to have been in good humour throughout, joking with both the audience and the members of the court. The detainment and trial attracted much attention both in Stockholm and elsewhere. Thorild’s biographer speaks of “crowds of people and riots”, and Atterbom writes that students at Uppsala University arranged a funeral procession for freedom of the press. The trial was also reported in French and German newspapers. It continued on Christmas Eve, when the author submitted a specification of his opinion on the Freedom of the Press Act. He also admitted that he had considered omitting certain lines of argument from Ärligheten, but heard his heart respond: “That is not honest!” On 27 December he was sentenced to two weeks in prison on bread and water – “a mild, though somewhat humiliating verdict”, as his biographer Stellan Arvidson puts it. The trial was not over, but continued in the new year. A riot that took place in Stockholm in early January changed the general mood considerably.  

In a letter from January 1793, Thorild writes to Liljensparre, asking him to advocate for a mild punishment by using his influence.

I hate noise, quarrels, scandal [...] I am an author, who can be corrected with a single magnanimous word, and who would rather choose voluntary exile than quarrel over forms of government, 15 hundred of which I do not consider as good as a single great correct Truth – – – [...] Therefore, Sir, you could on this occasion do honour to both yourself and the Government through judicious leniency: it is not so easy to do violence to the opinion of the public, and it is pure cruelty to be more severe than is necessary.  

He also promises never to criticise the four estates of Parliament: “May they stand until they become so regal at the knees that they tumble!”  

In February, Thorild was sentenced to four years’ in exile. His departure has been enveloped in myth and wishful thinking. The author and librar-
ian Carl Christoffer Gjörwell, who always kept up with current affairs, bid Thorild farewell on 5 March and later reported that Thorild was receiving “constant visits from people taking their leave”. On 7 March he departed directly from the prison in City Hall and continued rapidly southward. In *Svenska siare och skaldar* (Swedish Prophets and Poets), Atterbom tells us that Thorild was allowed to stop for four days in Fittja, where he was celebrated by friends and followers and “his heart swelled with great and tender passion in the circle of his countrymen so ardently devoted to him”. This farewell party is pure fiction, created either through poor sourcing or by Atterbom himself in a sudden attack of poetic spirit. As a prisoner, Thorild would be quickly deported from the country, and celebrations with like-minded people would scarcely have been permitted.

Nevertheless, Thorild’s journey went smoothly, he reported in a letter to a friend. The best was Helsingborg: “a little colony of freedom: the men young and quick, the wives and girls beautiful, the city pretty, the way of living cheerful, and republicanism would seem the natural state there”. Probably Thorild’s secret lover joined him in Helsingborg: a woman with the long, melodious name of Gustava Carolina Steilich von Kowsky, who would be his partner in both his travels and his life. Together, they now left the country. Thorild did not appreciate Copenhagen or the Danes, and, with characteristic italics, he says that everything “Danish is in general like a poor imitation of everything English, without fire, life, and real meaning”. The couple then continued on to Germany.

Eventually his exile was reduced to two years, and Thorild became a professor at the Swedish University in Greifswald.14

**Geijer – the bad boy who became a pillar of society**

After his death, Thorild became the indirect cause of yet another trial concerning the freedom of the press. In 1820, Erik Gustaf Geijer was bold enough to question the Holy Trinity in a footnote of his publication *Thorild. Tillika en philosophisk eller ophilosophisk Bekännelse* (Thorild. Also a Philosophical or Unphilosophical Confession), which led to an indictment.

To modern audiences, Geijer (1783–1847) is unfortunately best known as a representative of the conservative Swedish gothicism, with poems such as “Vikingen” (The Viking) and “Odalbonden” (The Peasant) to his name. However, he was a man of many talents – not only a poet but a composer, historian, philosopher, newspaperman, debater – and, moreover, one of those enviable people who were not afraid of changing their opinions.
Thus he went from oppositional, radical youth to conservative poet, and finally to liberal historian. The letters of his student years often contain taunts at the powers-that-be, and he frequently kept company with many of the people involved in the ‘music trial’ that led to major commotions in Uppsala in 1800. At the University’s celebration of the King’s coronation, radical elements in the Royal Academic Orchestra decided to play a piece that included a passage from the Marseillaise. This was forbidden, which led to a quick change in repertoire and strikes among the musicians, making it a complete flop. The trial that followed had rather serious consequences – several of those involved were expelled from the university, and the musical director nearly lost his post.\(^{15}\)

A few years later, Geijer was denied a coveted position as a tutor with the explanation that he was “without integrity”. He was vindicated through winning the Swedish Academy’s grand prize in eloquence with a “Panegyric on Sten Sture the Elder”. Now he became something of a celebrity, participating in the establishment of the Gothic League (Götiska förbundet) in 1811, and becoming Professor of History at Uppsala University in 1817.

Over the next few years, Geijer developed his interest in philosophy. In the autumn of 1818, he began his edition of Thorild’s publications (published 1820–1835), and the following summer he began writing the introduction. This grew into a whole book which Geijer describes in the foreword as “the fruit of a great deal of summer walks in my Heimat, and almost entirely written under open sky”. Here, Geijer discusses concepts such as knowledge and the relationship of humanity with God; like Thorild, he tries – in the opinion of Geijer scholar Elsa Norberg – to reach “a synthesis of reason and sensuality in knowledge theory”. The publication *Thorild. Tillika en philosophisk eller ophilosophisk bekännelse* was published in December 1820.\(^{16}\) It is not an easily intelligible publication, and when Tegnér thanked Geijer for the book, he claimed that he “nowhere near understood everything in it”. Geijer himself called it “peculiar” but also viewed it as his “philosophical confession”.\(^{17}\)

In the publication, Geijer accounts for such things as the various revelations of the deity. However, he calls the doctrine of atonement a crass idea and questions the Holy Trinity in a footnote:

> This is a point on which my conviction differs from the common doctrine. The doctrine of three persons in one Deity appears to me as an unfortunate metaphysical flourish, and in addition, seems like the beginning of polytheism, something foreign to Christendom, which is nevertheless cultivated in the Roman Catholic Church, through the worship of the Virgin Mary and the Holy Spirit. Understood thusly, the concept of the Trinity abolishes itself. [...] The Trinity belongs to the revelation of God at the time, not to the eternal essence.\(^{18}\)
To some people, this footnote was outrageous. The Court Chancellor considered the publication contrary to religion and wanted to take actions against it. “The Devil is now loose,” one of Geijer’s friends wrote in a letter of warning, which appears to have reached the author on his birthday, 12 January 1821. Since the text was published as an academic dissertation, it fell under the mandate of the Senate Council of Uppsala University as the university still had its own jurisdiction. The public prosecutor in Uppsala was required to submit his writ of summons there. In his defence speech, which Geijer gave in front of his colleagues, he asserted that the concept of the Holy Trinity was dealt with in neither the Old Testament, nor the New.¹⁹

It was obvious that the indictment did not concern the publication alone, but was also an attack on Geijer himself. In a letter to the salon hostess Malla Silfverstolpe on 16 January, he writes: “The rancour of so many decayed literary frailties seems to be conducting this feeble battle against me.” The fact that the publication dealt with Thorild may also have contributed to this. It became a kind of guilt by association in which Thorild’s verdict and exile sullied Geijer, who was genuinely interested in the Gustavian writer. Geijer too risked being sent into exile, and several of his friends and acquaintances were so worried that they dared not sign their letters to him – not even with their initials.

One anecdote tells how Palmblad, a lecturer in history and a friend of the Geijer family, wondered why four-year-old Knut Geijer seemed so upset. “Well,” he answered, “Mama is crying at home because we are leaving for Germany in a fortnight.” “The hell you are,” Palmblad exclaimed.²⁰ Anna Lisa Geijer’s tears may also have been due to the fact that just before their marriage, her husband had initiated a liaison (presumably platonic) with the German author Amalia von Helvig, to whom he was still writing passionate literary letters. Upon being informed of the indictment, von Helvig was shocked that “my noble and devout friend’s words could be twisted to show anything other than the pure Christian temperament that has always characterised his thoughts and actions”. She hoped that God would protect Geijer and felt compassion for Anna Lisa, “as she so unexpectedly sees her revered guide through life attacked”. No hope for a move to Germany was thus expressed from that quarter.²¹

Palmblad was proven right. Many people supported Geijer. At the end of January, he received an address expressing sympathy for his cause and calling him “an example to youth and men for Swedish culture”. The author was a young Carl Jonas Love Almquist, and the fifty signatories included other famous men, such as the artist Olof Södermark, the poet and gymnast Per Henrik Ling, the Hazelius brothers, the poet C. F. Dahlgren
and the historian Anders Fryxell. Several newspapers published defences of Geijer. *Argus* compared Geijer’s work to the catechism, and both this paper and *Stockholms Posten* gave a very biased account of the trial: the prosecutor’s contributions were not discussed. *Stockholms Posten* also published a letter to the editor that argued that the symbolic books of the Bible were not invariable, but that their interpretation must change over the course of time. The newspaper then discussed the religious issues at hand. The newspaper *Allmänna journalen* was against Geijer, but did not succeed when arguing for the superiority of the catechism over Geijer’s publication. At that time, articles in the newspapers were still for the most part anonymous, but the leading articles in *Argus* and *Stockholms Posten* were written by Pehr Lagerhjelm, Geijer’s friend from the Gothic League, and a bookseller named Wiborg respectively. The debate continued in newspapers and elsewhere even after the verdict was handed down.

Geijer also had good contacts, especially through his friends in the Gothic League, who had become influential state officials. A jury was selected – eight theologians and a lawyer – and on 14 February, they established that the publication was not in breach of the law. Geijer was thus acquitted, and the Senate Council was of the opinion that the publication could not be impounded. That same day, the Freedom of the Press Committee confirmed that the impoundage would be stopped.

Students had gathered outside the main university building – the Gustavianum – during the jury session, and the local newspaper reported:

> No sooner had the decision been pronounced than the good news was greeted with the liveliest hurrah, which was repeated many times over when the now-acquitted teacher emerged and was accompanied by the crowd, under song, to his dwelling-place. Upon taking his leave, he reminded the young men in simple words what security and happiness it must inspire to be judged by Swedish law and by a Swedish commission under a noble and magnanimous government. There were few among those present on whose faces tears and the deepest emotion could not be seen.

The students’ joy knew no bounds. After leaving Geijer, they continued – still singing – to Riddartorget, where they sang the Royal Anthem and cheered: “Long live the King! Long live the freedom of scientific research under his sceptre!” Their loyalist gratitude and trust is striking. The stu-
dent nations decided to jointly honour Geijer with a feast to which the jury, the Senate Council, and Geijer's family and friends were invited. Atterbom wrote a poem, and there were toasts to the King, the Crown Prince, the university and, of course, Geijer. The newly-acquitted hero was carried around the room, gave speeches, was congratulated and cheered. It was the kind of party, that Uppsala is famous for. Two days later, Geijer was fêted by the Gothic League simultaneously in Uppsala and Stockholm, to be on the safe side.26

From then on, Geijer kept within the boundaries of the law, though he still displayed quite bold opinions. He continued to write poetry, but made his greatest contributions as a historian – so influential that Marx himself read him – and as one of Uppsala University's foremost lecturers of all time. He served as vice-chancellor of the university several times, on top of being a Member of Parliament and a member of the Swedish Academy. His symbolic significance is evident through his being placed on a pedestal in front of Uppsala's new university building, standing in a lecturer's pose.

Anders Lindeberg – involuntarily pardoned

The Freedom of the Press Act hit hard in all directions. Kellgren, Thorild and Geijer belonged to the great Swedish authors – both in their own times and for posterity – but more obscure literary practitioners were also affected by their own outspokenness. One of these was Anders Lindeberg (1789–1849) who, in his youth, left his studies to become an army officer in the war against Russia. The war was not a success, and neither was Lindeberg's military career. After reaching the rank of captain, he left the army and devoted himself to writing.27

Lindeberg was an opinionated man, and he did not hide this in his publications. In 1816, he published *Några tankar om grunderna för en svensk thronarfvinges uppfostran* (Thoughts on the Bases for Educating a Swedish Heir Apparent), which the owner of the printworks showed to the Court Chancellor. The publication was not illegal, but the Crown Prince still considered it unsuitable for such a work to be disseminated. Its character – Åhlén says – was "disquieting". The solution was for Lindeberg to receive compensation for the entire edition, which was confiscated and destroyed.28 He had thus come a little way towards the primary goal of an author, namely, being paid not to write. The Venetian pornographer and gossip writer Pietro Aretino was one of the few who had achieved it by that time.29

Since Lindeberg was now in the money, he could devote himself to literature. The theatre was his greatest interest, and he wrote a number of plays
that rarely made it to production. He was very critical of state domination over the theatre, and wrote a succession of publications on the issue. He also tried to found an independent theatre. All his proposals were passed over without action; in March 1834 he submitted a letter to the Parliamentary Ombudsman in which he criticised the King’s conduct and recalled in passing the murder of Gustav III, which had taken place in March. Lindeberg was accused of lese-majesty, jailed and sentenced to death. This case was not a crime against freedom of the press but against freedom of expression. The punishment was unusually harsh, and the execution cannot have been intended to be carried out. Lindeberg was pardoned, but he refused to accept the verdict and instead asked to be executed on his birthday, 8 November. This was approved, but on 20 October a general amnesty was issued for political crimes and treason. However, Lindeberg was adamant, and finally the prison management resorted to an extreme measure. They allowed Lindeberg to take a walk outside the prison, and then simply shut the doors behind him. His freedom was forced upon him.\(^\text{30}\)

At last, Lindeberg founded his theatre – though without a permit – but the project was not long-lived. Instead, he continued as a critic. His achievements qualify him as the patron saint of those dogged by misfortune and unsuccessful enterprise.\(^\text{31}\)

“Strindberg and his wretched literature”

After Lindeberg’s pardon, life become relatively quiet for authors. The literature of the mid-nineteenth century was also fairly socially presentable. There was Fredrika Bremer, who after a lifetime as a novelist provoked the establishment with *Hertha* (1856), the feminist manifesto in which she not only pleaded for giving women legal majority and the right to their bodies and souls, but also discussed female suffrage and hinted at the fact that women would be eminently suitable for the clergy. Then there was C.J.L. Almqvist, who was significantly more provocative and caused a fierce debate after questioning the institution of marriage in his 1839 novel *Det går an* (“It Will Do”, published in English as *Sarah Videbeck and the Chapel*). Since Almqvist was a clergyman, the Cathedral Chapter in Uppsala tried
to have him convicted in June 1840 for *Det går an* and his 1839 novel *Mar-jam*, which dealt with the mother of Jesus, through calling these literary publications “Swedish original dissertations”. The author had not realised that the Cathedral Chapter may not be able to distinguish between fiction and the author’s own opinions. The Cathedral Chapter urged Almqvist to defend himself publicly.\(^{32}\) Later on, he would be implicated in another criminal case, but this time of attempted murder. It is still unclear whether or not he was guilty, but he quickly went into voluntary exile.\(^{33}\)

The radical writers of the 1880s were as angry as the *philosophes* but less cautious. The most influential among them was August Strindberg (1849–1912). With his breakthrough novel *Röda Rummet* (The Red Room), he established himself as the foremost representative of the younger generation, and also became favourite among the readers. Karl Otto Bonnier recruited Strindberg to his family’s publishing house, well aware that this radically rejuvenated the publishers’ literary profile. His father, Albert Bonnier, stated that Strindberg “lashes out left, right and centre”, and probably not even the company would be safe.\(^{34}\)

The elder Bonnier was right in his conjecture, although he probably expected a verbal attack rather than an indictment. The Jewish Bonnier family overlooked Strindberg’s often-expressed anti-Semitism and appreciated his writings, even if neither father nor son seem to have been sold on the first few short stories for the collection *Giftas* (Getting Married), which was written in the summer of 1884. Karl Otto Bonnier found the stories “a little too sketchy”, and his father complained that they were “shockingly naturalistic, and a real outcry will be raised over his indecency and such”. The publishers became more positive during their work on the collection, and Albert Bonnier even succeeded in persuading Strindberg to remove some of the profanities. All along, the author seems to have been more aware than the publishing house of the book’s explosive force. He sent them new stories, which he called “an ungodly thing”, and wrote on one occasion: “I will sacrifice the nasty words I have mentioned. But I do not want to let them take my testicles off, like they did with Nordensvan and Geijerstam.” The authors he saw as castrated were a couple of the less vitriolic writers of the eighties.\(^{35}\)

There was no doubt that the book could be regarded as indecent. The publishers knew it, and Strindberg knew it. He wanted to offend – he wanted to stir up the stagnant pond of Swedish cultural life. The publishers seem to have been most worried about the obscenity, but Strindberg wrote to them a few weeks before publication: “Do you think there will be an indictment for the Piccadon?” This was not an innovative name for intimate body parts; the author is alluding to a passage in his story “Dygdens
In some historical trials concerning freedom of the press, the increasingly free-thinking protagonist in "The Rewards of Virtue" by August Strindberg thinks of confirmation as the "shameless deception that was performed with Högstedt’s Picadon [a brand of wine] at 65 öre a jug and Lettström’s corn wafers for 1 krona in which the priest claimed was the flesh and blood of Jesus of Nazareth, the rabble-rouser executed over 1,800 years ago". To the publishers, it seemed impossible that anyone would react to that. They thought they lived in enlightened times.

The book was published on 27 September 1884. Only a week later, it turned out that Bonniers were wrong, and Strindberg was right. On 3 October, what remained of the edition – only 461 copies of the original 4,000 – was confiscated by the city bailiff. The others had been sold or delivered to bookshops outside Stockholm. Four days later, an indictment was brought. Surprisingly, it did not concern obscenity, but blasphemy. Already at the time, the identity of the accusers was a topical discussion. Strindberg suspected the conservative poet Carl David af Wirsén, Secretary of the Swedish Academy, but later assumed that the guilt lay with "the women", no names mentioned. Possible involvement from the royal family was also discussed. Queen Sofia surrounded herself with devout women who might object to such careless comments about religion, but above all it was Oscar II himself who objected to what Strindberg and his followers stood for. "General opinion [...] is very much against Strindberg and his wretched literature, so the timing might be favourable," the King wrote to his son Gustaf (later Gustav V) in November 1884. In his biography of Strindberg, Gunnar Brandell describes how Oscar II tried to "revive the half-obsolete exceptional provisions in the Freedom of the Press Act" and states: "If anyone on this side is to be called an instigator, it is first of all the King himself."

The Norwegian writer Bjørnstjerne Bjørnson was another representative of that “wretched literature”. In March that year Bjørnson was indicted for lese-majesty for an article in the Norwegian newspaper Verdens gang – at that time, Norway and Sweden were in a personal union. Bjørnson wrote to Strindberg (possibly with a certain amount of enthusiasm) that he might be sentenced to hard labour, but the indictment was ultimately withdrawn.
Bjørnson had without hesitation, taken responsibility for the article, but in Strindberg’s case there was a problem. In connection with the indictment under freedom of the press, a ‘name slip’ – in which the author confirmed he was the originator of the work – was required. Without a name slip, the publisher had to assume legal responsibility. The fact that Bonniers had not arranged a name slip shows that the thought of indictment had barely crossed their minds. To further complicate the issue, Strindberg had left Sweden for Geneva.

A protracted battle now began in which the publisher and Strindberg’s friends tried to bring him home to be held accountable for his work. On the day after the impoundage, Albert Bonnier wrote to Strindberg and proposed that the author should write a name slip and come home for the trial. Strindberg wrote out a name slip and had it witnessed by Scandinavians in Geneva, but this was not sufficient. Albert Bonnier launched a bombardment of letters and telegrams, and as time passed he became increasingly overwrought. As a Jewish immigrant, he felt vulnerable in Swedish society; both father and son began to feel the power of conservatism. They received hate-mail, both from former friends who considered hard labour a suitable punishment for the sixty-four-year-old Albert and from anonymous writers who thought Karl Otto should be soundly thrashed in a dark alley.

Strindberg, on the other hand, took the whole thing quite calmly. He had started visiting a nihilist bookstore in Geneva, and his comrades there advised him to stay where he was. He used every conceivable excuse in the book to Bonniers, even stooping to blaming his absence on sick children. He felt sorry for himself, and felt he was standing alone before “judges, newspapers + hermaphrodites and pederasts + Ibsenians = the radicals (my friends!)”. Strindberg will be Strindberg. In addition, he seems to have perceived appearing at the trial as a sign of weakness. “Travelling home to be punished is admitting one’s criminality,” he declared. 39

It became increasingly obvious to Albert Bonnier that he might end up in prison. Turning to Strindberg’s friends for help, he pleaded with him to come home. Among those he turned to were Hjalmar Branting (a future prime minister), Carl Larsson, and Bjørnstjerne Bjørnson. A family council was held at the Bonniers, and they decided that Karl Otto should bring Strindberg home. People had begun to doubt the author’s ability to make a decision about whether or not to return home and though Strindberg a coward. At least this is the opinion that is suspected in Per Gedin’s book on Karl Otto Bonnier.

According to Strindberg, Bonnier showed up in Geneva “green in the face, with a fistful of telegrams” – something that is definitively wrong. According to Bonnier, Strindberg was in a good mood. They dined together,
but the author seemed to have no desire to travel. The day after – 16 October – he suddenly changed his mind, rushed the departure, and seemed to eager to stand and fight. He wrote to Carl Larsson: “Now I am going home! But now I will take the mickey out of them! I will make speeches in railway stations and have already booked a gala spectacle at the New Theatre!” Again, he sees himself as a born victor, and even if he was sometimes discouraged during the journey, he was cheered up by the sight of a ship in Kiel harbour – the Auguste Victoria. It was actually named after a princess, but in Strindberg’s eyes it was a sign that everything would go well.40

The trial naturally attracted a great deal of attention and was discussed in the press, with contributions supporting and attacking the author. Brandell calls it a “press war”. This was the first time in Sweden that there was modern newspaper coverage of a trial regarding freedom of the press. Meanwhile, Strindberg managed to fall out with Bjørnson, who still defended his former friend in an article in Dagens Nyheter. Discussions of Strindberg’s authorship and potential guilt occurred in other quarters as well. Two debates in Uppsala student debating societies were devoted to him in November 1884: on 2 November his views on the women’s issue were discussed at Södermanland-Nerike Nation, and on 22 November Norrland Nation discussed the “moral content” of Giftas. Before that, much had happened.41

Unsurprisingly, conservatives hoped Strindberg would be convicted. Oscar II seems to have been excited at the thought and devoted himself to violent fantasies. Interestingly enough, a number of Strindberg’s followers also hoped for a conviction. It would lay bare the unreasonable nature of the conservative social structure. Friends of Strindberg arranged a boat that would take him to Åland if necessary. In case of a prison sentence, Strindberg’s own plan seems to have been to escape abroad and let Bonniers take care of the fines.

On 20 October, Strindberg arrived in Stockholm. Around five hundred people were waiting for him at the station, and he actually got to hold his ‘platform speech’. That same evening, a celebratory performance of Strindberg’s Lycko-Per was staged, and the author ascended the stage wearing a laurel wreath.42

The trial took place the following day. During the long train journey, Strindberg had written a speech in which he, like Geijer before him, defended himself by referring to the Bible. In contrast to the trial before the Uppsala University Senate Council sixty-four years earlier Strindberg considered himself compelled to point out that he really was a Christian. Between trial meetings, Strindberg lived an intense life, dining with friends
and surrounding himself with admirers. He received 300 letters and telegrams during the trial, which lasted less than a month.

After a break of eight days, it was the prosecutor’s turn to speak. On 4 November, the jury was appointed, with each party choosing their representatives. Some jury members would later be attacked in the press.43

The verdict came on 17 November. Strindberg was acquitted and the confiscated books were returned. When Strindberg had returned to Geneva and could no longer charm Stockholm, there was a conservative backlash in which Giftas and the Bonnier family were attacked in every way. Anti-Semitic abuse was common, and the Jewish community in Stockholm asked Albert Bonnier not to print a new edition. Bonnier himself hesitated, but he also realised that the acquittal was good publicity. Strindberg, of course, was entirely for a new edition: “The book is a book of the future, and will probably become a reader in girls’ schools in the future.” A second edition was printed as well, but Bonniers made amendments in several of the short stories, and the provocative “Dygdens lön” was excluded.44

Gustaf Fröding. A Morning Dream

The people of the 1880s saw themselves as enlightened, above trivial morals and old religious doctrines. The conservatives demonstrated that this was not the case – at least not in all social circles. Another court case directed against a Bonnier author – this time a poet – appeared twelve years after the Giftas trial.45

Gustaf Fröding (1860–1910) published his first collection of poems, Guitarr och dragharmonika (Guitar and Accordeon), in 1891 and quickly became a beloved poet. He belonged to a new literary current and was no vociferous agitator like Strindberg, but more introverted, lyrically and metrically interested writer. His fluent, almost dancing verse is easy to fall in love with and Gedin is of the opinion that Fröding created a new audience – not academic, not intellectual, but “a reading general public”.46

Among Swedish poets, Fröding is one of the most musical. “Never before has the highest of skills been united with spontaneous naturalness,” writes his biographer, Staffan Bergsten.47

Most of the authors covered in this chapter are well known, and have been the subjects of a great deal of research but none of the indicted works have been as thoroughly studied as “En morgondröm”. In his dissertation from 1962, Germund Michanek studies the background and origin of the poem and the ensuing debate on morality and freedom of the press, as well as the ultimate indictment, trial, and press coverage. I will therefore base
my account to a large extent on Michanek’s book. The indictment against “En morgondröm” has been given a special position in the history of Swedish literature, since the motivation was neither political nor religious, but moral. The poem is often passed by in silence by literary scholars, and when dealt with, its quality is seldom discussed. From the generation who were children when the poem was indicted, there are stories of how high-school students gathered in “an isolated corner of the park” to read it. The verses in question were “baked into the pornographic sour-dough”, and in a couple of novels the poem is described as “racy” and pornographic.48

"En morgondröm" was printed in Fröding’s third collection of poems, Stänk och flikar (Drops and Patches), in the autumn of 1896. It is a delicate, utopian poem on the relations between a man and a woman in a nearly paradisiacal environment: “a cross of the classic pastoral scene, the Biblical paradise, and the countryside of Värmland” – which was called ‘the land of the Aryans’. Fröding does not, of course, use the term ‘Aryans’ in the same way as the Nazis later would. The word signified the ancient ethnic group that spoke the language that was the mother-language of the Indo-European languages. There was a general interest in these ‘Aryans’ at the end of the nineteenth century, and Fröding himself studied a number of works on both German and Asiatic mythology, as well as on the racial theories of the time. Elsewhere he talks about “Aryan sun dreams”; and sun worship in general is a common theme in turn-of-the-century Swedish literature. It is also obvious that ‘the land of the Aryans’ in “En morgondröm” is not some cold Scandinavia.49
The poem starts with a dream – the depiction is therefore given the character of fiction within fiction – of this land “where the sun-god poured out/with a generous hand” and where there lived “a naked folk, too proud for the yoke/too pure for the shameful veil of attire”. In this country there wanders “a free young man” of the strong, athletic, smiling type, as does a pretty, mocking girl. Provocatively, she sets upon him, whereupon one thing leads to another and soon “she lay beautiful, naked and spread out/and with knees spread wide and with trembling bosom/met her lover’s desire”. There ends the fourth song of the poem. The fifth begins:

Souls on fire, blood dancing,
he was hers, she was his,
he became she, she became he,
one and everything and two,
when his youthful power of manhood
pressed into her.

And with her head bent back in kissing,
with her bosom raised towards her embracer
she drank the finest drink of life
and love in every crashing wave,
she partook of the juice
of the fire of his body,
in every spark that flew
from his vigour.

The act is depicted in yet another line, “until all at once a stream shot out/from his body” and the two are further united through “father’s vigour and mother’s seed”. The depiction is characterised by mutuality, and it is not so strange that the couple is anonymous – this is, after all, a dream. In the final stanza of the poem the couple are lying tightly entwined, filled with post-coital bliss and clearly lawfully married according to the custom of this primitive people. In addition, they seem to be future parents, if the references to juice, vigour, and seed are to be interpreted literally.

Fröding suspected that the outspokenness of “En morgondröm” might shock his contemporaries. Prior to publication, he let several friends – Hjalmar Branting, his wife Anna (who was an author) and Ellen Key among them – read the manuscript, and he left it to the politician and lawyer Karl Staaff to negotiate with Bonniers prior to the publication of Stänk och flikar. The reason for this was probably not Staaff’s liberal attitudes or position as a lawyer but rather his position as the representative of the Association of Swedish Authors. The occasionally impractical Fröding had simply got it into his head that this representative had to handle the negotiations. Staaff also circulated the poems for reading among Swedish intellectuals.
Some historical trials concerning freedom of the press

In June 1896, Staaff reported the results of the negotiations with Bonniers. The fee would be substantial, but there were some comments about the poems:

Mr. Albert Bonnier has not himself proposed the exclusion of any of the poems; on the other hand, he has put forward the possibility of changes to some of the expressions in “En morgondröm” – a wonderful poem, entirely outstanding in the Swedish language – which he does not want to get rid of (in the way Ellen Key seems to have feared) but on the contrary particularly admired.52

In July, Albert and Karl Otto Bonnier read the poems together, “with admiration, but not without a certain feeling of unease”. They had been through this before, especially during the Giftas trial, and invited Fröding out to their summer place on Dalarö, presumably to discuss “En morgondröm”. No meeting took place, however, and in the middle of August Stänk och flikar was available in proofs. Fröding made numerous changes in the first proofs, but did not want to see the second proofs. On 29 August, however, Bonniers asked him to “allow a few lines in the poem “En morgondröm” to undergo reappraisal and potential retouching” and marked the lines in the proof, which was sent the same day. It concerned the aforementioned fifth song and the last verses in the fourth song, where the woman’s expectant desire was depicted.53 At the time, Fröding was visiting a merry group of friends in Sandhamn – among them Verner von Heidenstam and Albert Engström – and his friends advised him “with a superb lack of responsibility” (in Michanek’s words) to avoid cuts. Many years later Albert Engström remembered that summer:

We advised him unanimously to print the poems, despite the fact that there would be an awful row around them – that was easy to foresee – and we encouraged him much like Carlén to the notorious Captain Lindeberg, who wished to be beheaded for his crime against majesty: “Of course you should let yourself be beheaded. It feels very, very good!”54

Fröding was, however, neither a foolhardy Lindeberg nor a pugnacious Strindberg. Even so, he obstinately explained to Bonniers that he had discussed the matter with Heidenstam and decided not to make any cuts. According to one of those present, Finnish author Adolf Paul, Fröding took courage during his days at Sandhamn and felt “that his impending act was great enough to risk his life for”.55

Book production was rapid in those days. On 30 September 1896 Stänk och flikar was on the market, and the first reviews came the same day. During the summer, there had been rumours in the press that the collection of poems would contain risqué parts.
On the day of its publication, Karl Warburg wrote in Göteborgs handels- och sjöfartstidning: “No words are spared here, not even the coarsest. And here, no depiction of desire and its satisfaction is spared.” Warburg compared it with Kellgren’s “Sinnenas förening” (The Melding of the Senses), a breathlessly erotic poem in which the entire depiction of intercourse is framed in a single sentence, as if the narrator is unable to bring it to a full stop before having reached the climax of composition. Other reviewers seemed almost despondent, asserting that every artistic depiction of “the primitive side” vilifies it through publicity. The ultraconservative Carl David af Wirsén felt the collection contained many good things, but at the same time a “shocking crudity and coarseness”. He spoke in part positively about “En morgondröm” – it “begins beautifully” – but he explicitly distanced himself from the end of the poem:

There is only one name for writing like that, and that is ‘shamelessness’. Such poetry is deeply fallen that depicts a physical act that is otherwise hidden in secrecy, and without the slightest shame describes the most delicate mysteries. [– – –] One can only be amazed that something like this could have been printed in Sweden, and the author – who wrote such a poem as “Souls on fire, blood dancing” has violated the sanctity of poetry and can scarcely reconcile his error. Poetry is certainly not a nun languishing away, but that does not mean that she can be a prostitute.56

The only female reviewer – Jacobine Ring in Nya Dagligt Allehanda – personally attacked Fröding and asserted that he was mad.

However, some reviewers were expressly on Fröding’s side. In the new, radical newspaper Upsala Nya Tidning (where Fröding had been among its first contributors), Karl Erik Forsslund provided an almost utopian image of a better future, when “a song about the most natural thing in nature – about the moment that is the perfection of all passion” would not be regarded as “aberration or infamy”. Emil Kléen, in Folkets tidning, also appreciated “En morgondröm”. Interestingly enough, both Forsslund and Kléen were young – aged twenty-four and twenty-eight – and perhaps had another perception of morality than the older reviewers. The thirty-one-year-old editor-in-chief of Socialdemokraten, C. N. Carleson, wrote approvingly about “En morgondröm”, describing it as “a fantasy in which the poet portrays our progenitors’ free, natural lives at the dawn of history, long centuries before the corset and the race of Catonists in skirts and trousers”. The poem was, he asserted, “at least as pure as C[arl] D[avid af] W[irsén]s most innocent thoughts”.57 Considering the phenomenally smutty fantasies Wirsén often nursed in his moral battle, Carleson seems to have a point.
Some historical trials concerning freedom of the press

The reviews were only part of what was written about Stänk och flikar. Double standards of morality and guardians of public morals celebrated triumphs, and Fröding (who by this time was already experiencing mental health problems) was regarded as mentally ill and “En morgondröm” as pure pornography. This was varied across all keys and voices. The most outspoken songs were reprinted in the scandal sheet Budkaflen, and Aftonbladet attacked Bonniers in an article with the headline Fy! (Shame!). Upsala Nya Tidning reciprocated to this Fy! in a defence of Fröding. Other friends and defenders compared the nakedness of the poem classical sculpture, whose purity and beauty no-one questioned, and interpreted the poem as a depiction of the condition of original innocence. Hans Larsson compared it to outspokenness of Horace, and Georg Brandes likened it to the eighteenth century poet Bellman. All friends were not steadfast – Heidenstam failed Fröding quite substantially, and wrote a vulgar parody of “En morgondröm” that he sent to his fellow poet Levertin.

The question of Fröding’s guilt was keenly debated that entire autumn. The humourous press, which had grown strong over the last few years, published caricatures of all involved – usually in comical, humiliating situations. The Uppsala students were also interested in the debate. On 15 November – before the verdict was handed down – the debating society at Norrlands Nation devoted an evening to “En morgondröm”. Similar discussions certainly took place, both among students and non-students, but from this evening there is a report. The opening speaker began by reciting Fröding’s poems and announcing his greatness. There was never any discussion, however. In the minutes, this is explained by the fact that everyone agreed with the introductory speaker, but this was possibly an attempt at caution – or possibly the young men were too embarrassed by the presentation of Fröding to dare express themselves.

And then there was the indictment. When Strindberg was indicted for Gifitas, he wondered who was behind it; it seemed that at least part of the responsibility lay with Oscar II, who objected to Strindberg’s work. On the other hand, the King appreciated Fröding’s previous collections of poems, and he did not seem to have had anything against the poet himself, either – he recommended Fröding as a suitable acquaintance to the County Governor in Karlstad. Stänk och flikar did not agree with him – in his memoirs, he called it “the litterateur Fröding’s notorious, genial but undisguisedly smutty publication”. It was rumoured that the King demanded an indictment against Stänk och flikar at a Cabinet meeting on 9 October 1896, but this cannot be proven. It is clear, however, that the Cabinet meeting was held at eleven o’clock in the morning, and that the Minister of Justice gave the order of impoundage barely two hours later. This might lend credence
to this hypothesis. In the application made to the Office of the Chancellor of Justice, the pages containing the last three lines of the fourth song and the entire fifth song of “En morgondröm” were mentioned in particular.  

On Monday the 12 October, Albert Bonnier received the summons. As with Giftas, the impoundage did not go well. A mere 300 copies of the book’s original unusually big edition of 4,200 copies could be found, while a full 1,800 copies of Budkaflen, containing the poem, were ceased. The impoundage may have been illegal, as they had waited too long to begin the process, but Bonniers did not protest. As with Giftas, the indictment was directed at the publisher. Fröding had actually written a name slip, but not correctly – it should be placed in a sealed envelope, and two witnesses should attest to the contents of the envelope – and on 2 October, Albert Bonnier requested a new name slip. Several of Fröding’s Stockholm friends refused to witness the contents of the envelope for fear of being indicted themselves. When, on 4 October, Fröding sent the envelope back, it had been witnessed by the editor and assistant editor of Upsala Nya Tidning. On 24 October Albert Bonnier delivered the name slip to the court, whereupon he was removed from the case and the indictment was transferred to Fröding. The relationship between Fröding and Bonniers remained good throughout the trial. It was a more liberal time than the 1880s, and the publishers never came up against the kind of persecution that characterised the Giftas trial. This time, they were also convinced of a verdict of acquittal.

Fröding’s defence was prepared by a law office in Uppsala, since he lived in the city, but was conducted by Stockholm lawyer Carl Lagerlöf. However, it is clear that Fröding was responsible for writing his own defence, if not the legal jargon. He mentions that the poem deals with a primitive people (whose customs could be freer than among the nineteenth-century bourgeois) and by no means involved depravity:

In the poem nothing else occurs that contradicts the perception that this is a type of marriage, consummated through the embrace in the forest. I do not wish to deny that this depiction is unconcealed, nor that it does not correspond to what is considered decency in some circles of people now living, and therefore can be regarded by them as morally nefarious and sacrilegious.

It was also emphasised that Fröding was trying to show “the beauty and sanctity of nature” in the poem. A positive statement by the national poet Viktor Rydberg was also used in the defence.

One newspaper described Fröding as “a middle-aged, swarthy man with a bald pate, a grizzled beard and large, worried eyes. He seemed a bit bothered by the attention directed at him by those present”. In general, he was
usually depicted as withdrawn and awkward. He was a different kind of author than Strindberg, but he could also be portrayed as another sort of genius – not extroverted and provocative but lyrical and introverted.

In contrast to Strindberg, Fröding did not entertain or gather followers around him. After the first session of the trial on 24 October, he first had dinner with Albert Bonnier and then devoted himself to “an orgy of alcohol” from which he did not recover for a week. During the continued period of the trial, he travelled down to Stockholm once a week – something that exhausted him.

While Fröding was quite uninterested in the jury selection his friends were all the more active. As with Giftas, it was a question of balancing the radical friends of the defence against the prosecutor’s more conservative picks. On 27 November, the trial took place. The jury was expected to answer only one question: whether or not the publication was criminal. After a two-hour session – which Michanek supposes points to rather extensive deliberations – they answered the question with an emphatic “No.” and, then everyone signed this decision. Fröding, however, was so exhausted that he did not wait for the answer but “sought the usual anaesthetic” (alcohol) and did not return to Uppsala until 30 November. Only towards Christmas did he calm down, begin writing poetry again, and spend time with his sisters.

Nevertheless, when the second edition of Stänk och flikar was printed at the end of 1896, some omissions were made – the entire fifth song of “En morgondröm” was removed, but the last three lines of the fourth song were left in. The Bonniers were thus less cautious here than when they printed the second edition of Giftas.

Conservative forces were so indignant that Fröding’s book had been acquitted that by 1897 a motion had been put forward to limit the scope of the Freedom of the Press Act so that “descriptions that offend order and morality” could be indicted. This came into effect in 1900. Michanek writes: “The indictment against Stänk och flikar is unique in legal history: in 1896, Article 3, § 13 was used for the first time and (for the time being) last time as support for an indictment of a piece of literature.”

One recurring aspect of these trials is the surprise of the authors and the surrounding community. Are we not living in enlightened times? We thought saying these things was allowed! The exception to the rule was Strindberg, who gladly caused trouble and who enjoyed putting his head on the chopping block. Strindberg “does it on purpose”, as Virginia Woolf says about men’s outspokenness in A Room of One’s Own – one of the most important books on women’s writing. Another interesting aspect is not a single woman writer during this period seems to have been indicted for
her writing. There were clearly fewer women writers, of course, but were they only more cautious – or were they simply more clever?

Here, we have encountered a variety of different authors. They are united only in their desire to say what they thought was right and ignore the consequences. The counts in the indictments, however, go from politics during the French Revolution to religion during the nineteenth century – and, when the turn of the century was close, suddenly immorality. Fröding’s friends were right, of course – Horace wrote significantly more daring stuff, and even if Karl Warburg seemed to consider Kellgren’s “Sinnenas förening” more decent than “En morgondröm”, there is no doubt that the participants in both poems devoted themselves to the same fundamental, highly human activity. In both cases, it also took place entirely without reference to four-letter words. Strindberg’s letters are more outspoken than these erotic poems. Among Fröding’s defenders Bellman was mentioned, but funnily enough not his poem “Fredman’s Epistle No. 72” (“Glimmande Nymf!”), which is a significantly more sensual portrayal of sex than Fröding’s. Neither Bellman nor Kellgren were brought before a court for such things. During the Gustavian period, eroticism was a joy, and the enlightened person also sought the enlightenment of the body. The danger in freedom of the press lay in political and religious missteps. With the moralism of the nineteenth century came other values. Progress is not a given, not even when it comes to freedom of expression.
Notes


3 The report is based on the documents in the case, which are printed in Kellgren SS VII, p. 190–201.

4 Johan Henrik Kellgren, _Samlade Skrifter_ V: i (Stockholm, [1946]), p. 16.

5 Ibid., p. 15. See also Carina Burman, _Vältaalen Johan Henric Kellgren_ (diss., Uppsala 1988), p. 139.


7 Arvidson 1993, p. 108.

8 Åhlén 1986, p. 132.

9 Arvidson 1993, pp. 609 ff.

10 Thomas Thorild, _Samlade Skrifter_ III, SFSV XV (Stockholm 1936–1944), p. 263.


P.D.A. Atterbom, _Svenska siare och skälser eller grunddragen af Svenska vitterhetens häftar intill och med Gustaf III:s tidehvarf V_ (Örebro, 1863), p. 81.


18 Geijer 1820, p. 82.


20 Stiernstedt 1964, pp. 22 ff.


24 Landquist 1954, p. 146.

25 _Uppsala Stads och Läns Tidning_, 19 February 1821. On 15 February, the newspaper announced that "Yesterday, Professor Geijer was declared not guilty by the jury".
Regarding the house where the meeting took place, Stiernstedt says “academic building” and Landquist “university building” (ibid., respectively p. 146). This indicates that the meeting took place in the Gustavianum. The current main building of Uppsala University was not constructed until the 1880s.

29 Journalists would essentially be paid not to write when they were bought out from their newspapers. For example, after literary critic Klara Johanson left Stockholms Dagblad in 1911, she was paid for a few years not to publish in other daily newspapers. Carina Burman, K.J. En biografi över Klara Johanson (Stockholm, 2007), p. 222.
33 The entire affair is discussed in Johan Svedjedal, Frihetens rena sak. Carl Jonas Love Almqvists författarliv 1841–1866 (Stockholm, 2009), pp. 271–316. The question of guilt is discussed on pp. 313 ff., and Svedjedal states here: “Even if the evidence against Love is not entirely watertight, it seems overwhelmingly strong.”
37 Brandell 1985, pp. 57 ff., quote on Oscar II pp. 62 f.
38 Brandell 1985, p. 62.
40 Gedin 2003, pp. 130 ff., quote p. 131.
42 Brandell 1985, pp. 74 ff. Laurel wreath according to Gedin 2003, p. 132.
43 Brandell 1985, pp. 76 ff.
45 A list of publications that were “requested to be indicted, that have been confiscated, and/or indicted” during the 1880s and early 1890s can be found in Germund Michanek, En morgondröm. Studier kring Frödings ariska dikts (diss.,
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Uppsala; Stockholm, 1962), pp. 36 ff. The erotically oriented publications seem to have been pure pornography with titles such as Rapport om fästningen Mädomborgs intagande (Report on the Capture of Fortress Virginity, 1881), Lätt på foten (Roundheel, 1890), and Den eldiga grevinnan (The Passionate Countess, 1893).


Staffan Bergsten, Gustaf Fröding (Stockholm, 1999), p. 94.

Michanek 1962, pp. 18–28, quote pp. 25 f. The poem is not mentioned in Lars Lönnroth and Sven Delblanc’s Den svenska litteraturen (Stockholm, 1989), the latest history of Swedish literature, in which Delblanc writes about Fröding in volume IV. There is only an obscure reference to “mystical dreams of the Aryan land”, p. 86. Neither is it discussed in the standard work for academic studies in literature – Bernt Olsson and Ingemar Algulin, Litteraturens historia i Sverige (Stockholm, 1987).


Michanek 1962, pp. 126 ff.


Michanek 1962, pp. 131 f., 136.

Quoted in Michanek 1962, p. 135.

Michanek 1962, p. 140.


Different voices are discussed in Michanek 1962, pp. 213–232. Further attacks on pp. 32–241. Caricatures from both the daily and the popular press are reproduced in Michanek.

Gedin 2003, pp. 254 ff. Landquist gives a subjective description of Heidenstam’s view of “En morgondröm”: “Heidenstam had every right to think poorly of Fröding’s poem. As a happy erotician, he found something unhealthy in that section of the poem, that exposed sexual intercourse without the presence of deeper feeling.” Landquist 1956, p. 267. He is of course correct that there is not much talk of emotions in the poem, but there is at least a clear reciprocality. Many of the researchers who dealt with the poem appear to think that it actually is not particularly good. Michanek is the main exception.

Burman 2012, p. 134.


Michanek 1962, pp. 262 ff.

Michanek 1962, pp. 265 ff.

Gedin 2003, p. 251.

Michanek 1962, pp. 270 ff.

Michanek 1962, pp. 282 f., 294 ff. The members of the jury are presented in detail by Michanek, pp. 278 ff.


The previous century and this one

Literature and freedom of the press in the twentieth and twenty-first centuries

AGNETA PLEIJEL

Points of departure

What is literature, and how does it differ from other forms of expression? One definition is that literature consists of fiction (from the Latin fingere, to create), as opposed to facts, or ordinary prose, and is something completely invented, such as Lewis Carroll’s Alice’s Adventures in Wonderland. The boundary between the genres is not sharply defined. A work of literature may, for example, reproduce reality subjectively through the eyes of the author. What is depicted takes place on a level that is not the same as that of objective reality. It is sometimes said that an as if has been interposed: it could have been like this.

Even literary forms that lie closer to ordinary prose, or the facts – essays, autobiographies and documentary literature – are not infrequently counted among pure literature, if what was written is marked by linguistic skillfulness, purpose and quality – in other words, its level of originality. Here, I will make use of a broad definition of literature. In some cases, I also discuss reporting and journalism – namely when they have played a role in the discussion concerning freedom of the press and freedom of expression.

Works classified as literature may encounter problems when there is some doubt about what is true in relation to reality. One example is the Norwegian novel Song of the Red Ruby (Sången om den röda rubinen), which aroused conflicting emotions in Sweden as well. Indignation was roused not only by the powerful depictions of sex, but also because the book, in some places, was read as a roman à clef and was regarded as slandering living people. In Norway in 1957, Agnar Mykle was condemned for a gross ‘crime against morality’ and the book was confiscated (the verdict was overturned a year later).
In Finland, there are examples of verdicts of guilty against literature in the late twentieth century, such as in 1966 against Hannu Salama’s novel *Midsummer Dances* (*Midsommardansen*), which was indicted for “blasphemy”. There are few similar cases in Sweden, and no analogies to the nineteenth-century literary freedom of the press lawsuits such as those against August Strindberg (for blasphemy) and Gustaf Fröding (for obscenity).

Accounts of reality, on the other hand, were often indicted during that time period. At the turn of the last century, Social Democrat Kata Dallström took up the limited right to vote, which she found unjust: “The First Chamber was elected by oxen, sheep, goats and money-bags; you can imagine yourselves what the representatives are like.” In 1909, an indictment was brought against her for “defamation of Parliament”. She was fined, and sentenced to two months in prison.

Another revolutionary, Hinke Bergegren – editor of the socialist youth paper *Brand* – was a popular speaker of the day on another class issue, the right to birth control. He was indicted in 1909 and made to spend some time behind bars. A law was introduced the following year that forbade agitation for contraceptives, called “Lex Hinke” in popular parlance. Thus, at the turn of the last century, it was considered illegal to defame Parliament and to propagandise for condoms (uncontrolled sexuality – that of the lower classes, in any case). In these cases, the law protected the powers that be – the state and the Church.
At the same time author Hjalmar Söderberg received criticism for his 1905 novel *Doctor Glas*, which was regarded by some as challenging to the law and the Church, but he was neither summoned to court nor indicted. Does this mean that literature has been favoured in relation to other forms of expression? I will return to this question, as I will to circumstances other than the law that could threaten an author’s right to write freely. I intend, in five sections, to outline the factors that have been important for freedom of the press and freedom of expression in Sweden, and thus to attempt to reflect the period.

1. The ‘von Pahlen controversy’, or ‘Krusenstjerna controversy’, of the 1930s was triggered by social antagonisms around the authorship of Agnes von Krusenstjerna. It provides a picture of the atmosphere during the 1920s and 1930s vis-à-vis legislation.

2. The outbreak of war in 1939 and the war years are a dark period, with many Government restrictions on freedom of expression. These curtailments met resistance from those who opposed the policy of neutrality and the complaisance of the state towards the Great Powers. This section depicts the attitude of the state, and the transition to the 1950s and peace.

3. Author Ing-Marie Eriksson was indicted and sentenced – unexpectedly for many – for her 1965 novel *Märit*. This section is dedicated to the novel, the indictment, the verdict and the subsequent long discussion of the case. The novel was condemned for “slander”. Could this have happened today, a half-century later?

4. Although the IB affair of 1973 was triggered by a series of reports and a factual study, it is not possible to ignore the verdicts against journalists Peter Bratt and Jan Guillou, who were indicted not under the Freedom of the Press Act, but for espionage. The incident had repercussions for the Freedom of the Press Act.

5. The twentieth century passes into the twenty-first with globalisation, the Internet, war in the Middle East, attacks against freedom of expression – under a religious pretext but for political reasons – and gigantic streams of refugees. By way of conclusion, I will reflect on current tendencies and the future.

1. The Misses von Pahlen

The first volume of Agnes von Krusenstjerna’s long *Misses von Pahlen* series – *The Blue Curtain*, from 1930 – received appreciative reviews. Let me quote Allan Bergstrand: “For all friends of progress, it is gratifying to know that thirty years ago this book probably would have resulted in a
‘morality scandal’ that would certainly have led to a lawsuit on freedom of the press. Nevertheless, times are changing!” (Arbetet, 15 Dec 1930). He was alluding to the depictions of erotic complications.

Krusenstjerna was an esteemed author with the Bonnier publishing house and had many works of fiction behind her that had met with a great public response. The von Pahlen controversy has been discussed by many writers – early on by Olof Lagercrantz, a relative of the author, and later by several women researchers. She was not alone in breaking the taboo against erotica in literature at that time. Towards the end of the 1920s, the “Five Young Ones” group must be mentioned, with people such as Harry Martinson and Artur Lundkvist. They spoke about “primitivism” and “the cult of life”, and demanded a more open view of love and sensuality.

Krusenstjerna did not belong to the modernists, but wanted to put women’s sexuality and experiences on the map. The publication of the von Pahlen novels was not without its problems. The head of the company, Karl Otto Bonnier, objected in a letter to “Your unhealthy desire to deal with perverse exceptional cases, and no less your desire to depict erotic scenes in such detail, which – even without any sort of prudishness – must be banned from literature”. Their collaboration became more and more difficult. Bonnier wrote to Krusenstjerna that her entire body of work was “of the type that is called *zersetzend* in Germany, and which all of ‘the respectable public’ here as well regards as subversive. Our company, especially, sits in a glass house where we are not only watched over by thousands of eyes, but where indeed there are people who would really like to throw stones” (1933).

The company refused to publish the last three parts of the suite. They would instead be published by the avant garde, but short-lived, Spectrum publishing company (1931–33), which published a periodical under the same name and included Karin Boye, Erik Mesterton and Josef Riwkin on its editorial staff. New ideas – modernism in architecture, psychoanalysis, and modern literature – were reflected there. For Agnes von Krusenstjerna, the break with Bonnier was a hard blow. Karl Otto Bonnier was certainly candid in his objection to her bold erotic motifs (adultery, homosexuality, incest, love between brother and sister and erotic feelings between the female protagonists, Petra and her niece Angela).
There were, however, other circumstances during that period that in all probability influenced the publishing company. One was the reaction in Christian circles and from ecclesiastical quarters towards literary depictions that were considered morally subversive and regarded as an attack on the family. Another reaction came in the form of anti-Semitic attacks on Bonniers from Nazi groups. The company had long been sitting in a “glass house”, as the head of the company wrote. Ever since its establishment in Sweden in the early nineteenth century, the Bonnier family had been subjected to anti-Semitic attacks. Upon the publication of August Strindberg’s *The Son of a Servant* in 1886, the Secretary of the Swedish Academy Carl David af Wirsén linked obscenity with Jewishness: “Two Jews are ultimately responsible for this pornography.” Bringing together Jewishness with obscenity and sexuality belonged to the clichés of the period.

In 1916, these remarks were published in the newspaper *Fäderneslandet* in its series *Rich People* (Rikt folk), in which Bonniers was given the greatest amount of space. The publisher was continually attacked in publications such as *Den svenska Nationalsocialisten* and *Nationalsocialistisk Tidning*. After the Nazi seizure of power in Germany in 1933, Bonniers also experienced anti-Semitism from that quarter. In 1934 Leon Ljunglund, editor-in-chief of *Nya Dagligt Allehanda* and chair of the Publicists’ Club (Publicistklubben), initiated a campaign against the publisher that lasted for several months. Per I. Gedin, in *Litteraturens örtagårdsmästare. Karl Otto Bonnier och hans tid*, (The Herb Gardener of Literature. The Life and Times of Karl Otto Bonnier) claimed that “no Jewish family was subjected to more anti-Semitic defamation than the Bonniers”.

During the same period – the mid-1930s – the Oxford Movement, a moral doctrinaire movement originating in England, began to exert influence in Sweden as well. In Christian and ecclesiastical circles, protests against sexual motifs in modern literature increased. Theologist Bo Giertz called for a fight against what he saw as depravity in literature: “sightseeing around the dustbins”. Lund’s Christian Student Association collected 126,000 signatures on a petition, submitted in 1934 to the Minister for Justice, to demand stricter press legislation and that a literature committee should be set up to assess literary works on the basis of Christian values as an aid to purchases by libraries.

These demands did not lead to any action on the part of the state, but they were followed intensely by the press. In addition, Giertz (together with other Christian contributors in the 1935 book *Kulturkris* (Culture Crisis)) worried that unchecked immigration from the East would mix the Swedish race with foreign elements. Bonniers thus found itself in a vulnerable position concerning the rejection of the von Pahlen suite. Surges from
two directions collided over the publisher: criticism from the Church with a nationalistic tone and smears from growing national socialism. These movements should not be confused. However, they were joined in certain respects. Agnes von Krusenstjerna’s novels found themselves in the middle of this cross-fire.

The starting shot for the von Pahlen controversy was fired in January 1934, in an article by Karin Boye in Social-Demokraten, “When the Wind Changes” (Då vinden vänder sig). Boye complained about the reviewers’ silence around Krusenstjerna’s novels after her change of publisher: “the deathly silence that benevolent older men wrap around the small faux pas of a nervous young woman whom they earlier praised to the skies – so much more friendly, as the little faux pas is 800 pages strong and can hardly be assumed to have rashly come into existence”. She defended the author’s right to write without intervention from moral censorship, and reminded her readers of the situation for literature in national socialist Germany. Boye’s article met with a strong backlash in the press, including papers such as Svenska Morgonbladet, which regarded it as an attack on the bourgeois family, praised the demonstrations by Swedish Christian Youth and took the opportunity to express sympathy with the book burnings in Germany.

The newspaper Social-Demokraten responded a few days later with a survey among young authors – Artur Lundkvist, Eyvind Johnson, Vilhelm Moberg and Gustav Sandgren – who came together in defence of the freedom of fiction. Three months later, the literary magazine Bonniers Litterära Magasin (BLM) conducted a new writer’s survey with reference to the visits by Christians to government officials and the cultural-reactionary developments in Germany. Responses came in from Marika Stiernstedt, Alf Ahlberg and Ivar Harrie, unanimous in their resistance to all forms of literary censorship.

What started as a debate about the rights of women authors to make use of daring erotic motifs thus flowed into a defence of the freedom of literature. In the von Pahlen controversy, a number of intellectuals came together on Krusenstjerna’s side: author Johannes Edfelt, the Christian Sven Stolpe and Torgny Segerstedt, anti-Nazi editor of Göteborgs handels- och sjöfartstidning. Working-class authors such as Ivar Lo-Johansson, who would feel alien in the environment of the nobility in Krusenstjerna’s novels, also saw the dangers of a conservative ideology directed against the freedom of fiction. The von Pahlen controversy lasted until the beginning of 1936. It cannot be followed here, but it may be said to have formed the Swedish intellectual resistance to Nazism.
Freedom of expression was regarded by Krusenstjerna’s defenders as a superior value. From this aspect, the von Pahlen controversy may look like a dress rehearsal for the outbreak of war. In March 1939, only a few months before the war became a fact, Moa Martinson wrote to Karl Otto Bonnier: “I beg of you, Mr. Bonnier, to encourage your sons, your relations, and your rich acquaintances not to yield, but to go into battle against the monster” – that is, German National Socialism. She added that “when the Nazis come”, it would be the end of both socialists and Jews.

Agnes von Krusenstjerna died in March 1940, during the first winter of the war. Despite demands from different quarters, her novels were not indicted. It can thus be said that freedom of the press held out against the vociferous opinions of the time. After the war, Bonnier resumed publication of Krusenstjerna’s novels, first with the Poor Nobility (Fattigadel) series of novels which she had nearly managed to complete at the time of her death, and after that with her collected works.

2. The Second World War and freedom of the press

The outbreak of war in September 1939 was followed by an immediate prohibition by the state on insulting “foreign powers” in print and in speech. Minister of Justice K. G. Westman dusted off an article that had not been used for a long time: the almost-forgotten Article 3:9 of the 1812 Freedom of the Press Act. Now, it was found to be necessary. With its help, books could be confiscated without legal action or trial.

The article was used for the first time on 17 November 1939 with the seizure of a novel by Gustaf Ericsson, *Hitler Will be Shot at Midnight!* Ericsson was an adventurous writer, part pathological liar, who went from the extreme left further and further to the right. If the confiscation of his novel did not arouse great attention, the subsequent actions from the Government did so all the more.

The curtailment of freedom of the press, which is under discussion here, is dealt with in more detail by literary historian Per-Anders Wiktorsson. In January 1940 the ‘means of compulsion’ laws, which gave the police and the Swedish Secret Service the right to monitor citizens, were introduced.
At the same time the State Information Administration (Statens informationsstyrelse) was established, tasked with providing the newspapers with “instructions in publicity issues”, which could almost have been regarded as a censorship and propaganda body. Publications that were openly critical of Germany were seized, among them Europa 1940 by Ture Nerman, Why Britain is at War by the British author Harold Nicolson (married to the poet Vita Sackville-West) and Hitler Speaks by Hermann Rauschning (a German author, a former Nazi, afterward in exile and an opponent of National Socialism).

On 28 February 1940, on the suggestion of the Coalition Government, Parliament introduced the ‘transport ban’, which meant that it was forbidden to convey publications that could “damage the relations of Kingdom of Sweden with foreign powers” via means of public transport. Ture Nerman’s anti-Nazi periodical Trots Allt! (Despite Everything) had a transport ban imposed on it from April 1940 to January 1941. No communist publications were permitted to be sent by post or railway between March 1940 and March 1943. An intervention against a larger newspaper was made for the first time on 16 September 1940. This was against Göteborgs handels- och sjöfartstidning (GHT), whose editor Torgny Segerstedt wrote bluntly about the state of affairs in Germany. In his diary, Prime Minister Per Albin Hansson wrote that conflict with a foreign country could not be risked “because a man should be allowed to produce what he pleases”. It was not yet a matter of censorship through preliminary examination, but on the other hand it was about a range of obstacles for journalists and authors to express themselves freely. GHT demonstrated against the intervention by coming out with blank columns which, to their readers, marked articles that had been taken out.

In June 1941, the Coalition Government introduced the ‘censorship’ laws, which required preliminary examination of all printed material during a war or threat of war. Since freedom of the press was protected by constitutional law, the law was forced to stay dormant until after the following election. The war was almost over by that time, and it never entered into force and was abandoned. However, the knowledge that it had been planned did exert a deterrent during the war. From 1940 on, the State Information Administration monitored not only newspapers, periodicals and books, but also spoken lectures, pictures, film, radio and gramophone records.

From May 1940, “spreading of rumours” was monitored and studied with the help of more than two thousand agents across the country. This was termed “cultural popular preparedness”. Appeals to citizens were posted in public places, such as the picture of the striped tiger (which I saw in a train compartment where it had remained after the war and I had just
learned to read) with the text: En svensk tiger (A Swede keeps silent). Other messages were: “The spy puts the pieces together/Keep your peace/Keep quiet about what you know/Be particularly careful in restaurants”. Or: “Do not engage in conversations with unknown people”. And arranged almost like poetry: “Serious times require/Community spirit/Vigilance/Silence”. In September 1941, a press commission of established journalists was set up and tasked with monitoring the newspapers.

Between 1940 and 1943, 315 texts were confiscated and 280 newspapers and periodicals were seized. This domestic monitoring received help from the German Legation in Stockholm, which notified the Coalition Government on a continuous basis through its ambassador Victor zu Wied, Prince of Wied, as to the books that were found to be objectionable. The legation complained about Harald Beijer’s novel Joos Riesler, Vilhelm Moberg’s novel Ride this Night, Eyvind Johnson’s novel Krilons resa (Krilon’s Journey), and Mari-ka Stiernstedt’s novel Attentat i Paris (Attack in Paris). The Swedish Government did not take action against these novels, possibly because the authors were far too well-known.

The ban also affected film and theatre to a considerable degree. As early as October 1939, a new film regulation was introduced, which led to Charlie Chaplin’s The Great Dictator not being permitted to be shown to Swedish audiences during the war. Michael Curtiz’s Casablanca, with Humphrey Bogart and Ingrid Bergman in the starring roles, plays out in Casablanca, which was governed by the French Vichy regime during the war. The film could only be shown after the censor’s intervention (an exploding bottle of Vichy water was seen as insulting the pro-German Vichy regime). In total, 59 feature films were banned.

As a consequence of proposals from the German Legation, interventions in theatre plays were carried out, such as the one against the dramatisation of Vilhelm Moberg’s Ride this Night at the Royal Dramatic Theatre in 1942. The action of the play, like that of the novel, takes place in mid-17th century Småland. Foreign knights have come into the country, among them the German Klewen, who oppresses the formerly free farmers. The play was perceived as an alle-
RESOLUTION.

Till Överståthållarns Rådets kännedom har kommit, att i ett under namnet "Gullregn" å Folkteatern givet skådespel förekommer en scenbild benämnd "Den ökända hästen från Troja", vilken scenbild med dess innehåll är förvarelseväckande.

Med anledning härav prövar Överståthållarns Rådet med stöd av 13 § i Kungl. ordningsstadgan för rikets städer den 24 mars 1868 skäligen förbjuda ovannämnda scenbilda vidare utförande.

Den, som icke nöjes med denna resolution, lager därmed en ändring genom underdåniga besvär, vilka vid talans förlust skola till Kungl. Socialdepartementet ingivas eller med posten insändas så tidigt, att de hör till Kungl. departementet inomma före klockan tolv i trettionde dagen efter erhållan del av beslutet, delgivningsdagen oräknad.

Stockholm i Överståthållarns Rådet för polisärenden den 9 augusti 1940.

På Överståthållarns Rådets vägnar:

Erik Ros.

Otto Lindell.

Ätt avskrivet, betygar

På tjänstens vägnar:

(Ötto Lindell)
The previous century and this one

gory of the contemporary period. Associations that could direct thoughts towards Adolf Hitler were removed, and the word ‘German’ was replaced by ‘foreign’. The première of Bertil Malmberg’s Excellensen (His Excellency) was preceded by uniforms with swastikas being removed and “Heil” being replaced with “Hi”, “Hey,” or “Hurrah”. Even the dramatisation of Stiernstedt’s Attentat i Paris was de-Germanised. The Royal Swedish Opera’s Peer Gynt was met with German complaints through the Swedish Secret Service, which resulted in a scene with something that seemed reminiscent of a Nazi salute being omitted.

Variety show king Karl Gerhard was forced to cut out the song “Den ökända hästen från Troja” (The Infamous Horse from Troy) in his 1940 revue Gullregn (Golden Rain) after intervention from the police authorities under the justification of “risk of public riot”. During subsequent performances, Gerhard let a horse be rolled onto the stage, dressed in a nightcap instead of a green hat as previously, and equipped with a muzzle besides. In place of the forbidden song, he himself read the police authority’s ban resolution out loud. The public fell in with the idea at once and seem to have appreciated it, loudly.

These restrictions thus created prohibitions where violations risked summons or indictments, either by individual prosecutors or by the Office of the Chancellor of Justice as representative of the state. In August 1942, Minister of Justice K. G. Westman entered into the literature debate and expressed his dissatisfaction over the authors of the time being unable to provide “a fine and noble manifestation of movements in the popular spirit”. He met with opposition. Vilhelm Moberg opposed the restrictions on freedom of the press and the neutrality policy more pugnaciously than most. In 1941, he wrote that Swedish literature was “threatened to its very foundations”.

He referred in particular to the complaisance of the Coalition Government towards both Germany and the Soviet Union (after the attack on Finland in 1939). During the war, he devoted himself almost full-time to agitation against the Government for the purpose of strengthening Sweden’s will to defend itself. He did not get his articles into the newspapers, such as the one about train transports of German troops and weapons to occupied Norway, and against “Division Engelbrecht”, which conveyed German troops from Norway to Finland. Nor did Bonniers dare to publish his political articles.

He published them on his own, in the form of pamphlets. He found a kindred spirit in Torgny Segerstedt who, as time went on, included everything he wanted in Göteborgs handels- och sjöfartstidning. Even if the Government authorities did not take direct action against him, Moberg experienced many kinds of obstacles to conveying his opinions. He found premises closed when he arrived in a town to hold a lecture, which meant
that the local guards were obedient to the authorities. Apart from Moberg in *Ride this Night*, several authors discussed censorship in their books, including Karin Boye in her 1940 novel *Kallocain* and Hjalmar Gullberg in his 1942 collection of poems, *Fem kornbröd och två fiskar* (Five Loaves and Two Fishes). Pär Lagerkvist belonged to the anti-Nazi activists.

Authors and artists who protested are mentioned here. It is impossible to know how many of others applied self-censorship. Nor do we know how many were German sympathisers. From this aspect, the war years and their consequences are a kind of *terra incognita* in Swedish historiography. Below are some sections dealing with the war years and with the transition to peace.

**The example of Israel Holmgren**

The treatment of Israel Holmgren provides one example of how monitoring of citizens could be carried out. According to Ola Larsmo, he met with “perhaps the dirtiest trial during the war years”.

Israel Holmgren – not of Jewish heritage, despite his name – was a well-known professor of medicine, a broad-minded liberal and a popular lecturer. Together with the former Communist member of parliament Ture Nerman – from 1939 onwards a Social Democrat – he founded the “Kulturkamp” (Cultural Battle) association. Both worked within the “Kämpande demokrati” (Battling for Democracy) educational association, and both were sentenced to prison for their anti-Nazi agitation.

In 1942, Holmgren published the book *Nazisthelvetet* (The Nazi Hell), which reported on mass executions of Jews in Germany and on torture in Norwegian prisons, which were also the subjects of his lectures. Acting Minister of Justice Thorwald Bergquist ordered the police – on the basis of Swedish Security Service shorthand records of his lectures – to impound the entire stock of books. The Minister of Justice found the information that 320 000 Jews had been executed during the year too objectionable.

Holmgren was indicted in September 1942 for abuse of freedom of the press. During the trial, the prosecutor said: “A statement with the implication that the Government suppressed such facts as to withhold information that should come to the attention of the public” was “intended to arouse contempt for the Government”. Whether the information “was accurate or inaccurate” was considered to be of lesser importance.
By that time, the Holocaust had been well substantiated in publications such as Ture Nerman’s *Trots Allt!* and the periodical *Judisk krönika* (Jewish Chronicle). In October 1942, historian Hugo Valentin wrote a long article in Göteborgs handels- och sjöfartstidning under the headline “Utrottingskriget mot judarna” (The War of Extermination Against the Jews). Despite the murder of Jews in Germany having thus passed the barrier of opinion and reached a great many readers, Holmgren was sentenced to four months in prison on 7 December 1942.

In January and February 1943, *Svenska Dagbladet*, *Göteborgs-Tidningen* and *Dagens Nyheter* were already writing openly that the German Nazis had murdered two million Jews. German deportation of Norwegian Jews to concentration camps from occupied Norway resulted in the Court of Appeal deciding, in May 1943, to halve Holmgren’s prison time. The section on German crimes in Norway was considered to be “not punishable”. The prosecutor unsuccessfully appealed the milder verdict.

In October 1943, the occupying German power in Denmark prepared for the arrest of Danish Jews. The Swedish Government offered them sanctuary in Sweden. Despite this, the Swedish Security Service continued to monitor Holmgren and to fill folders with newspaper clippings about him. The last time they made a shorthand record of a lecture by him was in November 1943. His book *Nazisthelvetet* (*The Nazi Hell*) then became available in bookstores again, with the same content as before but now ironically re-christened *Nazistparadiset* (*The Nazi Paradise*).

After Stalingrad, when the German fortunes of war turned, restrictions in Sweden were reduced. The Security Service, however, did not lose interest in Holmgren. After the war, he demanded that the Government be held responsible for its laxity and censorship, but his request was not granted. In 1946, he resigned his membership of the Medical Association in protest against positions of trust being given to doctors tainted with Nazism. Holmgren turned 75 that year, and the Security Service registered the names of all those who congratulated him. The final clipping at the Security Service is his obituary in 1961, when Holmgren was 91. By that time, he had been awarded medals from England, Norway and Denmark, and from Germany as well. He received no similar acknowledgement in Sweden.

*Eyvind Johnson and the novels about Krilon*

A number of authors who resisted restrictions on freedom of expression developed methods for outwitting them. One way was to experiment with new narrative forms. Perhaps the most important example is Eyvind John-

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son, with his novels about estate agent Johannes Krilon. His three novels were written in ‘real time’, so to speak, during the war: *Grupp Krilon* (The Krilon Group), 1941; *Krilons resa* (Krilon’s Journey), 1942; and *Krilon själv* (Krilon Himself), 1943. Johnson’s novels about Krilon had a substantial dissertation by Per Anders Wiktorsson devoted to them: *Den utvidgade människan* (The Expanded Person).  

Wiktorsson has researched the restrictions on freedom of press of the war years, and much of his information has been used here. While writing them, Johnson regenerated the idiom of the novel (influenced by authors such as James Joyce, Thomas Mann, and John Dos Passos). Wiktorsson conducts an exhaustive analysis of the novels’ many layers of narrative. On one level, the suite is an allegory of the course of the Second World War, taking place in the Swedish real estate trade, through narrating how the real estate racketeers (the Nazis) acquire more and more territory on the market.

On another level, the novels are a depiction of the individual Johannes Krilon, the author’s alter ego. Johnson’s enemies are also Krilon’s, who vents his spleen on people in Swedish cultural life under slightly distorted names. On that level, the novels are a mirror of the times throughout the war years. The author sends Krilon on a secret journey to Norway. Johnson himself had good contacts there, and information about what had not been allowed to be published. A large number of Swedish papers had sought to publish documentation about torture in Norway, but were seized on 12 March 1942. On that date, *Göteborgs handels- och sjöfartstidning* came out with a front-page headline: “In Norwegian prisons or concentration camps”. Beneath it, on three quarters of page one, white space followed. Johnson wrote the confiscated text directly into Krilon’s journey, and criticised the ongoing confiscation policy. The Krilon novels were also written with a Norwegian and Danish audience in mind, and crossed the borders as contraband.

The novel’s unifying level of narrative is the meetings in a discussion group of men, who discuss ethics and aesthetics in various historical periods. The inheritance from Greece and Rome is brought out and interpreted as “humanism, freedom, individualism and human dignity”. Nothing less than the entire Western culture was at stake. What had to be defended was fiction as a form of expression for *the whole person*. Along with Wiktorsson, it could be argued that Johnson put “Nazi ideology within reach of commentary and criticism”.

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Most profoundly, however, the novels about Krilon are ideas about creation and art. Johnson shows what consequences the lack of freedom of expression has for the entire society. They depict how totalitarian oppression develops – something the war years gave the author rich material for. As a defence of freedom of expression, the suite is unparalleled in the art of the Swedish novel. Book sales increased during the war years, as did reading circles and borrowing of books from libraries. ‘Preparedness’ literature met with a great public response. Owing to its level of complication, Johnson’s trilogy is not among the most widely read, but greatly influenced views on censorship and dictatorship. Johnson had strong support from his publisher Bonniers.

The war years and the policy of neutrality was an exceptional state in the application of Swedish freedom of the press and of expression. After the war, a prolonged silence in publicity ensued. The swing in Swedish mentality after Stalingrad in 1943 later led to charged exchanges of views on the assessment of Sweden. Was the policy of neutrality cowardly or prudent? Were unnecessary concessions made, or were they necessary in order to keep Sweden out of the war? From the 1990s onward, these issues have been debated in numerous articles and books, unsurprisingly without concordant responses.

The post-war period and Vilhelm Moberg

In the face of the return to peace, the Freedom of the Press Act was revised in 1949. Sweden, however, was still marked to a considerable degree by traditional moral norms. The Church of Sweden was the state church up until 2000 (a law on religious freedom, which gave citizens the right to leave the Church without joining another state-approved religious society came only in 1951). Sexuality was surrounded by many restrictions.
An intense exchange of views arose around author Bengt Anderberg’s 1948 novel *Kain*, as a consequence of his openness concerning erotica but also for his criticism of dogmatic Christianity. The year after, Vilhelm Moberg published his novel of emigration to America, *Utvandrarna* (The Emigrants). Pentecostalist Ebbe Reuterdahl called it pornography and accused the author of un-Christian language, obscene sexual depictions and contempt for emigrants to America. He was given support in Parliament by Farmers’ Union MP Axel Rubbestad, who wanted to see Moberg in prison.

The battle between Reuterdahl and Moberg went on for a year in the press, and was nicknamed the Reuterdahl Controversy.

Moberg’s confidence in the powers that be had received a severe shock during the war years. His distrust continued during the 1950s in the battle against what he called the Swedish “corrupt legal practices” with which he believed politicians, the Church and the royal family supported each other. Moberg took up the cause of pastor Karl-Erik Kejne. Kejne had reported certain people, who he believed were procuring young men for homosexual gangs in Stockholm, to the police but had not gained a hearing there. Moberg also took action for Kurt Haijby, who blackmailed the Royal Court for large sums in order to hush up his reported sexual relations with King Gustav V.  

The Erlander Government appointed a Kejne Commission (SOU 1951:21), which did not find that anything improper had occurred. This did not increase Moberg’s confidence in the powers that be. Even in 1961, upon Kejne’s death, Moberg was convinced that the pastor had been poisoned. Moberg’s relationship with Prime Minister Tage Erlander, and later Olof Palme, was not easy for any of the parties involved. Moberg was not indicted for what he stated or wrote; even in his case, freedom of the press held out. On the other hand, he was sentenced for having illegally appropriated certain government authority documents during his investigations in order to photograph them. For that, he was sentenced to pay a fine. Few pens have been as sharp as Moberg’s in defence of freedom of the press – and that alongside extensive literary works. One objection that later came to be directed towards him was that his fight against corrupt legal practices contributed to cementing contempt for homosexuality.

The left-wing wave of the 1960s and 1970s involved sexual radicalisation, and led to many debates about equality, feminism and working mothers. The starting shot was fired in 1961 by Moberg’s daughter, Eva Moberg, in her article “Kvinnornas villkorliga frigivning” (The Conditional Liberation of Women). The fight for women’s rights during the 1970s led to a series of important societal reforms. However, a number of depictions of sex – especially during the first half of the 1960s – were met with indignation.
Lars Görling’s 1962 novel, 491, deals with a gang of youths at the bottom of society. A screen version of the novel was made in 1964 by Vilgot Sjöman. The title, 491, alludes to the Christian message that we must learn to forgive – not seven times, but seven times seven. The film was surrounded by scandal through its combination of sex and violence, including a bestiality scene between a German shepherd and a girl played by Lena Nyman. The scene was prohibited and subjected to cutting by the censor before the film could be shown in cinemas. Only in 1975, when the rules for film censorship were changed, was the film shown in its uncut version.

3. Guilty verdict in 1967 against the novel Märit

Sometime after her debut in 1965, author Ing-Marie Eriksson was indicted and her novel Märit convicted for “prohibited utterances in a printed document”. This trial is still discussed today. A few words about the novel: on one level, it provides a sensitive and unusual depiction of a young woman’s awakening sexuality. The events are related by the older of two young sisters, newcomers to a region of crofts in Norrland sometime in the 1930s. The family’s neighbour, Augusta, has several children. Their half-sister is the intellectually disabled girl Märit, youngest of the family and several years older than the two young girls. She willingly allows herself to be led by them into sexual games. One day, they take her with them to a neighbouring village to show her the train; Märit becomes fascinated by the onrushing marvel of speed.

After that, she dresses in men’s clothing and calls herself Ola, and wins respect through her raw strength in men’s work. She becomes man-crazy, and her family is constantly forced to look for her and with barely-suppressed rage, her half-brother Valle drags her home. The young girls take Märit’s side in what they see as her family’s oppression. The depictions here have mystical overtones, to an extent, the theme is ungovernable sexuality and the tragedy it leads to. Associations could be formed with D. H. Lawrence’s depictions of the clash between nature and culture, and society’s rules for suppressing sexuality.
The social order is victorious: Märit is forced to undergo an operation, which from the girl’s description is understood to be a sterilisation. As far as I know, Märit is the only depiction in fiction of the many forced sterilisations performed during that period in Sweden, above all on women, vagrants and those termed ‘mentally deficient’. The name of the village is never mentioned. On the other hand, Bräcke – a larger town far too distant to be visited by the young sisters – is mentioned once, which places the story in Jämtland. The mental hospital where Märit finally ends up places its location in Östersund.

Eriksson maintained in interviews that everything depicted in the novel was true. In 1966, Märit’s relatives reacted because they recognised themselves and their deceased mother in the novel. They were not described under their own names (except once, when Augusta’s real name slipped out), but considered themselves as having been caused great suffering, especially because everyone around the village of Sikås could identify them. Three of Märit’s half-siblings and a grandchild of Augusta sued the author – and the publisher, Bonniers – under Chapter 7, Article 4, Paragraph 15 of the Freedom of the Press Act and Chapter 5, Article 2 of the Swedish Penal Code – for violation of the press law involving gross slander, including of the deceased. They demanded considerable damages.

Eriksson contested the accusation. In the court proceedings, however, she conceded that three of the injured parties were models for characters in the novel, namely Augusta, Valle and Vanja “in the sense that is usually understood in this expression within literature”. She maintained that it was only the depictions of “Valle’s” abuse of Märit that were “dedicated to subjecting him to the disdain of others” in accordance with the paragraphs on slander. Other passages in the novel, she stated, were true and defensible.

The proceedings were initiated at the end of 1966. In most press libel cases, a special press libel jury is used, but in this case both parties abstained. The method the Municipal Court applied was to review a number of quotes from the book “independent of the content of the rest of the book” – fourteen in all. The Court disregarded some of them, such as Augusta being described as known for being the “filthiest” in the entire region (considering the “conditions that often prevailed in the countryside in the period in question in the book”, it could not be considered slander, the court wrote). Other quotes were found to be of a slanderous character, such as Augusta’s and Valle’s severe treatment of Märit.

From the verdict: “The Municipal Court finds that all the descriptions of abuse and violence occurring in the section to be of this character.” And further: “The question as to whether it can be considered defensible to pres-
ent the information in the book that was thus found to be insulting is of a fragile nature. Ing-Marie Eriksson’s interest in freely being allowed to say what her artistic conscience bid her to relate on the one hand, and the interest on the side of (the injured party) in keeping his and his mother’s reputations unspoiled on the other, must be weighed against each other.” The verdict is dated 3 April 1967. The author and Bonniers were found guilty, and sentenced to a fine of SEK 1,200 and damages to be paid to the three injured parties of SEK 5,000 each and SEK 13,000 to “Märit’s” half-brother. The verdict was confirmed, with certain changes, in the Court of Appeal.

The quotes that the court submitted, which depict “Valle’s” abuse of Märit, are certainly nasty; the court called them sadistic. Anyone who reads the entire novel, however, and not just the quotations out of context knows that the incident is seen from a window by two small girls with pounding hearts and eyes widened by the act. They stand for the narrator’s perspective or point of view, as is usual in the art of the novel. It is obvious, however, that the novel comes very close to reality. Märit can be read as a work of pure fiction about a pair of young girls’ sexual awakening and observations. It can also be understood as a document, or even report, from the period of forced sterilisations from the 1930s to the 1970s, the total scope of which was only revealed much later.

The case is an illustrative clash between the totality of a novel and the interpretation of quotes from it taken out of context. Far from the village of Sikås, where Eriksson grew up and which she depicted, the verdict roused indignation. Many authors – Lars Gustafsson, John Landquist, and Stig Ahlgren among them – protested. In Dagens Nyheter, Olof Lagercrantz complained to Jan Gehlin, Judge of the Court of Appeal and in addition the Chair of the Swedish Authors’ Association, that instead of defending the verdict, he should counteract the prejudice that “the model and the representation are the same thing”. Gehlin, on his part, put forward that it was not in the interests of the Authors’ Association for the public to get the impression that authors “have, or want, a privileged right to injure their fellow beings”.

Nearly thirty years later, in 1995, publisher Thomas von Vegesack, active in PEN Sweden and PEN International, indignantly took the case up once again in an article in BLM and argued that the verdict transformed a multifaceted work into “a simple roman à clef”. He appealed to Eriksson’s defence attorney at the time, Göran Luterkort. The latter insisted, in the literary magazine BLM in 1996, that the verdict was correct: “The grounds for exemption from punishment are described exactly in the law, and the defence must therefore adapt its arguments to them. What should defensibility consist of? Obviously, precisely what all authors maintain: namely,
the right of the writer to freely handle their material, even if someone feels insulted by what was written. In other words, the authors are trying to obtain a privilege that is not offered to others. The courts did not wish to grant Ms. Eriksson that privilege.\textsuperscript{16} And further: “The author must be considered to have the ability to introduce fictional elements such that identification is done away with, without the purpose of the work or its artistic quality being jeopardised on that account”. Luterkort referred to Hans-Gunnar Axberger’s dissertation \textit{Tryckfrihetens gränser} (Limitations of Freedom of the Press), which does not give authors and literature particular rights.\textsuperscript{17} von Vegesack was not satisfied: “The most outrageous thing in the case of Märit is that the crime is defined as literary incompetence. While reviewers and distributors of prizes praised the novel for its revelation of a cruel reality, the Court of Appeal accused it of not sufficiently camouflaging that reality.” He argued that the courts could not read literature. Stigmatising societal evils was one of the merits of the book.

As a comparison, he brought up an earlier novel, \textit{Den gröna ön} (The Green Island) by Bruno Poukka, a Finnish writer sentenced to eight years in prison at Långholmen for murder with intent to rob. When the novel was published, he had been pardoned and in 1939 legal action was brought against the publisher, who shifted responsibility onto Else Kleen, who had taken responsibility for publication. She wanted to have Poukka’s novel published in her efforts to reform prisons (in which she was successful as time went on). The matter made a splash, as at the time she was married to cabinet minister Gustav Möller. During the trial, the prosecutor did not dwell upon the miserable conditions in prisons, but only upon which members of staff had felt slandered. Kleen was sentenced to two months in prison and the novel was confiscated. In both cases, two interests faced off against each other: insults to individuals and protest against social evils.

As far as I have been able to determine, no guilty verdicts have occurred against works of fiction after Märit. This gives occasion to question whether the relationship between legislation and opinion has changed since the guilty verdict of 1967. Many literary works have later named real people. Carina Rydberg’s 1987 novel \textit{The Highest Caste} depicts her sexual come-ons to a lawyer she named; she candidly stated “revenge” as her motive. Maja Lundgren’s 2007 novel \textit{Myggor och tigrar} (Mosquitoes and Tigers) singles out men in the cultural life of Stockholm under their own names and her relationships – also sexual – with them. She has stressed that she wanted to stigmatise a prevalent male sexual oppression.

It may be conjectured that one purpose of both Rydberg’s and Lundgren’s novels was to “expose the people concerned to other’s contempt”, as was written in the verdict against Märit. Both books created lively debate
on what may be written about others, where ethical boundaries lie and the responsibilities of publishers. No summonses were issued. There are other cases where a summons was obviously considered. After Jan Myrdal’s autobiographical novels (Barndom (Childhood), 1982; Pubertet (Puberty), 1988; and Tolv på det trettonde (Twelve Going on Thirteen), 1989), his parents Gunnar and Alva Myrdal felt themselves to be mendaciously slandered. According to information in the newspapers they wanted to sue him, but abandoned the idea. Achieving a verdict against the author would be “an impossibility in a Sweden with freedom of the press,” wrote their biographer, Kerstin Vinterhed (Dagens Nyheter, 20 November 2006). There is reason to question whether the tolerance level for slander has increased over the years.

The Office of the Chancellor of Justice applies an extraordinarily restrictive limitation, indicated in the legislation, for public prosecution. But summonses no longer seem to be used against works of literature when private life is violated. Is this due to fears that a legal process would arouse unwanted public attention? Ing-Marie Eriksson depicted living people who had no other opportunity to defend themselves. In the latter cases, it was a matter of people in the public eye, who perhaps are believed to tolerate more. Since summonses against works of literature have not been applied after Märit, no case-law exists.

Consequently, the limits of freedom of expression in literature are uncertain. The question of whether a change has taken place over time is of great interest, but lacks an answer: as summonses for slander against works of literature have not been used after Märit, it is not possible to determine whether praxis in the application of freedom of the press has changed over the last half-century.

4. The IB Affair and its consequences

The revelation of the existence of an unknown information bureau was made in the form of a report series. My discussion of this in this context is justified by the fact that the circumstances were remarkable and that the case led to an overhaul of the Freedom of the Press Act.

The periodical Folket i Bild/Kulturfront was founded in 1971 on the initiative of writer Jan Myrdal, as was an association of the same name, for the purpose of working for freedom of the press and freedom of expression. Between May and October 1973, the periodical published a report series by journalists Jan Guillou and Peter Bratt, who revealed the existence of an organisation – the Information Bureau, or IB – that was unknown to
the general public and also to most politicians. It was linked to the Social Democratic Party, and tasked with conducting special undercover activities.

In the autumn of 1973, Bratt additionally published a book *IB och hotet mot vår säkerhet* (IB and the Threat to our Security), a detailed account of the Swedish undercover and security services, both those that were legal and those that were outside the control of Parliament. The book describes how IB sold information to major companies and the defence forces, primarily concerning the Soviet Union and other socialist states, but also about the political opinions, sexual preferences and private relationships of Swedish citizens. IB had been encouraged by Tage Erlander, and later Olof Palme.

Registering opinions had been prohibited since 1969, but was circumvented by IB’s provision of information to the business sector, the defence forces and other buyers. One important function was the registering of communists in workplaces for the trade union movement. In the book, Bratt repeats – as persistently as the Roman senator Cato, who felt that Carthage had to be destroyed – that a neutral commission consisting of representatives of all the parliamentary parties ought to be established in order to clarify the operations of IB and its offshoots into other areas in Sweden. This did not happen.

The Office of the Chancellor of Justice had reviewed the first article of the series, and decided not to start proceedings. However, the Minister of Justice at the time, Lennart Geijer, reported both Bratt’s book and the first report to the Chancellor. The journalists would not be faced with a freedom of the press charge. Instead, they were remanded in custody on 22 October 1973, and a raid was conducted by the police on the editorial offices of the periodical. The journalists were indicted in the District Court in January 1974 and each sentenced to a year in prison for espionage. The source of the reports, former IB official Håkan Isaacson, was sentenced to a year in prison for espionage and complicity in espionage.

The Office of the Chancellor of Justice had intended to bring a freedom of the press charge against Bratt’s book, but gave up after the sentences were pronounced. Bratt appealed the pre-trial detention to the Supreme Court, which disregarded his appeal and stated that as it was the unauthorised acquisition of information – which was not subject to the rules of the Freedom of the Press Act – that he was being blamed for, general law would be applied.

The verdicts in the District Court roused strong protests among the general public. The fact that taxpayers’ money was being used for a secret party-political espionage organisation came as a shock to many, as did the
fact that it took place in Sweden, which prided itself on its democracy. Several daily newspapers followed up on what in popular parlance was called SAPO (the Social Democratic Secret Service) to track illegal registration of opinions in workplaces. Minister of Justice Lennart Geijer was not particularly successful in clarifying the circumstances.

The Supreme Court did not take up the case; in the debate, this was interpreted as the prosecutor and police now being able to freely set aside constitutional law – that is, the Freedom of the Press Act – for repressive purposes. Guillou appealed the verdict of the District Court and had his punishment reduced to 10 months in the Court of Appeal. It was obvious that the Freedom of the Press Act was at stake. The many turns in the legal assessments cannot be discussed here, but an exhaustive analysis has been devoted to them by lawyer and writer Hans-Gunnar Axberger.20 His assessment – among many other viewpoints – is that faced with the overall picture, it appears as if the Office of the Chancellor of Justice “through its passivity, sanctioned a process that in practice meant the Freedom of the Press Act was circumvented”. A more determined action by the Office of the Chancellor of Justice at an earlier stage ought “to have been able to influence the development of the case”.

The perception that the political interests of the powers-that-be (in plain English: the genuflection of the courts before the Social Democratic Government) were victorious over the Chancellor of Justice and constitutional law, predominated among many judges and among the general public, and has continued to do so. Confidence in Swedish social democracy, with its long and unbroken hold on the Government, was harmed through the IB affair, which – together with other circumstances – contributed to Sweden electing a non-socialist government in 1976 and the first majority government since 1957.

Axberger called the IB affair a “turning point in the history of Swedish freedom of the press”. The Freedom of the Press Act was overhauled in 1978, according to Axberger a direct consequence of the IB affair.21 The rules on freedom of communication were clarified. Protection for people who provide information was increased through a prohibition on further inquiries. Researching facts for journalistic purposes should no longer be classified as a crime: “In other words, it will not be possible for prosecutors and judges – as they did in the IB affair – to bring legal measures to bear against actions that precede publication, thereby circumventing protection under constitutional law.”
The battle between the powers-that-be and journalists for freedom of speech

Even after the verdicts against the journalists and their source, the IB affair was not over in the eyes of the general public, but caused a range of repercussions, a few of which there is reason to discuss here. In 1976, brothel operations – a ‘call-girl chain’ – were revealed in Stockholm. As many of the women working there had foreign ambassadors as customers, the Swedish Security Service had been monitoring the operations for some time. The ‘madam’, Doris Hopp, was detained for suspected procuring and named many highly-placed individuals as customers, including Minister of Justice Lennart Geijer.

From August 1976, national police commissioner Carl Persson briefed Prime Minister Olof Palme in a number of memoranda that particularly emphasised the security and blackmail risks. According to Persson, the Government should have established an investigative commission to examine what had occurred, especially as “a great number of journalists seem to be working on the case”. No investigative commission came about.

The year after the election, however, Bratt – now employed at Dagens Nyheter – wrote an article (18 November 1977) including the information that Geijer, during his term of office, could be suspected of being a security risk through his contact with the brothel workers. Palme and Geijer immediately denied the allegations, and received support from Hans Holmér (Head of the National Swedish Police Board Security Division in 1976), press secretary Ebbe Carlsson and Hans Dahlgren (at the Swedish Government Offices until 1976).

The editorial management of Dagens Nyheter accepted the denial, apologised, and paid damages to Geijer (which he donated to a scholarship for investigative journalism), while Bratt was reassigned to a subordinate position at the newspaper. Palme’s denial could perhaps be viewed as protection of his Minister of Justice prior to the imminent election. He was harsh in his judgement; at a meeting of the Swedish Publicists’ Club, he likened journalists to “sewer rats with big yellow teeth”.

In 1977, journalist Jan Mosander at the Expressen newspaper had already requested from the Security Service that the memorandum be distributed. He received the response that it did not exist. Upon his next attempt, he received a rejection once again with the response that the memorandum was subject to secrecy. Since the memorandum was an official document, he persisted and finally succeeded – with the help of the Administrative Court of Appeal – in obtaining a considerable part of it. It was published in Expressen (26 August 1978) and confirmed in the main the contents of
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Bratt’s article – except for a couple of details (such as confusing the names of certain women, which Palme used as the reason for his total denial). It can be viewed as a squabble between journalists and the powers-that-be, opened by the IB affair and continued in the disputes around the ‘call girl chain’.

The whole affair did not subside easily. In May 1978, the television programme Studio S broadcast a description of the brothel affair, which led to a parliamentary debate. Many of the questions raised, however, have barely been answered even today. As late as 2011, writer Leif G. W. Persson, employed at the National Swedish Police Board during the IB affair, published his autobiography Gustav’s boy – berättelsen om min klassresa (Gustav’s Boy – The Story of my Climb up the Social Ladder), in which an insider account is given of the twist and turns in the affair.22

Persson was the ‘source’ who truthfully answered Bratt in the affirmative that National Police Commissioner Carl Persson had presented a report to the Prime Minister – the basis for Bratt’s 1977 article in Dagens Nyheter – which contained the names of certain politicians and Geijer. It soon turned out that several media and government authorities had disregarded the protection of sources. Persson had to quit his job and was hunted by journalists. His book points to several violations of the law, especially as regards protection of sources.

His superior at the time, former Nation Police Commissioner Carl Persson, has also described his role in the Geijer affair in the book Utan omsvep (In So Many Words).23 During the media storm in the 1970s, he himself demanded that the Office of the Chancellor of Justice Ingvar Gullnäs investigate his official handling of the matter. The Gullnäs investigation (1978) showed clearly that Persson’s conduct towards the Government was in all respects correct and defensible. According to Carl Persson, the Chancellor of Justice’s fifty-page investigation was “killed” in the mass media.

The 2012 movie Call Girl

Later on, in 2004, the clientele of the brothel chain became the subject of exhaustive reporting in the book: Makten, männen, mörkläggningen: historien om bordellhärvan 1976 (The Power, the Men, the Secret: The Story of the 1976 Brothel Affair, updated in 2012) by Deanne Rauscher, Janne Mattsson, and Gösta Elmquist.24 In addition, Rauscher contributed to the movie by Mikael Marcimain, Call Girl, based on the reporting of the case. The material from the 1970s consequently took the step from ordinary prose over to the field of art.
The film begins during the 1976 election campaign, and the Prime Minister is portrayed as one of the brothel chain’s clients. He has another name in the film, but a couple of easily recognisable quotes from Olof Palme come from him. The film focuses on aspects such as the brothel chain’s exploitation of underage girls, which was the case in reality. Purchasing sexual services at the time of the events in the film was legal; sex with minors, on the other hand, was not. It was untrue, however, that Palme – who was assassinated in 1986 – was among those who purchased sex. His survivors threatened legal action.

The filmmakers responded that the Prime Minister should be regarded as a symbol of power, and should not be interpreted as Olof Palme. Palme’s survivors then approached the Chancellor of Justice, Anna Skarhed, with a request that she prosecute for crimes in accordance with the constitutional law on freedom of expression. The Chancellor of Justice determined not to prosecute. Palme’s survivors, however, could take legal action against the film company themselves. They did not.

An artistic work was thus not sued this time either for crimes against freedom of expression, although the outcome could have seemed obvious. If the film had been sued, a trial – presumably with a jury – could have determined the limits of freedom of expression in this case. A sort of compromise took place instead. The film was shown in the edited version. In general, the film was well received, although some critics called attention to the fact that the message – the self-protection of the masters of power (the politicians) against the weak (the underage girls in the brothel) created uncertainty through its hovering between fact and fiction owing to the documentary form of the film.

Such aesthetics – blurring the border between fact and fiction – was also a strong tendency in other works of art during the same period.

5. The start of the twenty-first century and the future

“Free country!” we would shout at each other as children when someone said something the others regarded as incorrect. It meant that people were free to speak, and had a deeper meaning than any child could realise. Freedom of expression prevails in Sweden, an indispensable constituent of a democratic form of government. No freedom is total, however. Freedoms and rights of various kinds must be balanced against each other.

Here, I would like to reflect on a number of expressions that may either have the purpose of expanding freedom of expression or of limiting it.
Conscious blurring of the boundary between reality and fiction can be seen in many literary works from the last few decades. One example is the 2006 novel *Regissören* (*The Director*), in which author Alexander Ahndoril wrote in the living director Ingmar Bergman as the main character – something that strongly irritated Bergman. Ahndoril stated that he wanted to test the boundary between fact and fiction.

In 2007, author Lars Norén directed his play 7.3, written in collaboration with inmates in correctional facilities. They played themselves in their roles, and expressed their own opinions. A couple of them were pronounced Nazis and anti-Semites. During public performances at the Swedish National Touring Theatre, there were indignant protests that Nazis were allowed to use a Swedish stage to agitate against Jews. The protests reached gale force when a couple of the inmates, on leave from the prison as actors, took part in a bank robbery and killed two policemen.

*The Malexander Murders* can be seen (by those who like metaphors) as the departure of literature from fiction. “Honesty”, “reality”, and “hunger for authenticity” is something that was noted in the 2000s, perhaps because existence seems to be increasingly abstract and virtual. Norén later published his diaries, with *En dramatikers dagbok* (*A Dramatist’s Diary*) in 2008. In them he expresses opinions – at times offensive – about other people, and reports the opinions of others about third parties. A diary with equally frank statements about others has, presumably, not been published since Strindberg’s 1907 book *Svarta fanor* (*Black Banners*), but there the readers must figure out themselves who is hidden behind the assumed names. No one thought of suing Norén; his artistry is considered to be undisputed. The author Stig Larsson also offended quite a number of people in his books. His 1997 collection of poems *Natta de mina* (*Say Goodnight to all of Mine*) – though several could be mentioned – contains attacks of a private nature on people in cultural life that they cannot defend themselves against.

Malicious depiction is one way of robbing others of their identities. I will discuss these cases as examples of how much is permitted. If attacks on people in cultural life are the price to pay for freedom of expression, it can be said to be comparatively cheap.

Of a more serious nature – but with similarities – is the ‘identity politics’, which spread to the culture pages of the media and in certain cases to cultural institutions as well (such as Filmhuset; see *Dagens Nyheter*, 27 November 2015). Identity politics refers to the idea that only those belonging to a certain group, or who speak in the name of that group, have the right to express themselves, or that special allowances should be made for
certain groups. It may seem harmless, but from certain aspects it can function as a limitation on freedom of expression.

It may be about accusing others of expressing the ‘wrong’ sorts of opinion because they are ‘white males’, have an incorrect view of women, or are considered racists. Stina Wirsén’s 2008 animated children’s film, *Lilla hjärtat* (Little Heart), with a clear anti-racist message, is one example among many. Her drawing of a small black girl was made out by certain groups to be racist. After attacks in the media, telephone calls and lobbying, she grew tired of it and withdrew the film.

No repressive state is thus necessary in order to eliminate freedom of expression. In the 1940s, Vilhelm Moberg found premises closed when he came to agitate against the prohibition on freedom of expression. The same thing happens today – premises are closed when certain sensitive subjects are to be touched upon, such as Salman Rushdie or Islam. The reason given for this can, for example, that “safety could not be guaranteed”.

This involves demands for standardisation and consensus. The fact that *Lilla hjärtat* was stopped is paradoxical, seeing that anti-Semitism and Nazism are growing, especially among youth. Historian Heléne Lööw has likened today’s undemocratic, violence-prone groups to the situation in the 1910s and 1920s, and warned about not paying attention to them. One unchecked area is the Internet where hate, anonymous threats and extreme ideologies easily exert an impact - private individuals are given the impression that there are many people who share their opinions, as was the case with the Norwegian right-wing extremist Anders Behring Breivik in 2011 before he bombed the Government Offices in Norway and murdered a large number of young people at a Social Democratic camp on the island of Utøya.

Methods of straining or testing freedom of expression through demanding it in the name of art can prove to be difficult to differentiate from “agitation against a national or ethnic group”. On that point, the law limits freedom of expression out of concern for others. In 2009, “street artist” Dan Park in Malmö placed cans of Zyklon B outside a synagogue and was indicted for agitation against a national or ethnic group, but was acquitted. In 2012, he was indicted for a poster with the text “Our Negro slave has run away” and the image of a representative of the Afro-Swede community, concerning which earned him a conditional sentence and fines. For a similar provocation in 2014, he was sentenced for agitation against a national or ethnic group to six months in prison, reduced to five in the Court of Appeal. It may be regarded as a healthy sign that the Supreme Court of Sweden did not grant him leave to appeal.
Today, the world finds itself in an unstable condition, partially in chaos. The *fatwa* against author Salman Rushdie for his 1989 novel *The Satanic Verses* (which the Ayatollah Khomeini found inimical to Islam), was followed by the 2001 attack on the Twin Towers in New York. The attack on Danish newspaper *Jyllands-Posten* in 2005 for satirical drawings of the prophet Muhammad can be named among countless others. The fatal shootings of journalists at *Charlie Hebdo* and Jewish citizens in a Jewish grocery in Paris in 2015 was ideologically motivated jihadist terrorist violence, clearly directed against freedom of expression.

Similar attacks continually take place in other locations around the world. In November 2015, as this was being written, France finds itself under a state of emergency as a consequence of the terrorist shootings in Paris, for which ISIS (the Islamic State), or Da’esh, took responsibility. ISIS controls large amounts of territory, which leads to violence. This – and the war in the Middle East – have created immense flows of refugees that have largely paralysed Europe, where xenophobia, increasing nationalism and the fear of Islamisation can be observed in large parts of the population.

Even among intellectuals, uncertainty is not infrequently observed regarding what freedom of expression is and what its defence is about.
In 2015, the American organisation PEN awarded a prize for bravery to the remaining editorial staff of Charlie Hebdo. Over two hundred authors – some of them world-famous – protested, as they felt the prize insulted Islam. Salman Rushdie was among those who most powerfully began to speak against them. Not seeing freedom of expression as a value in itself is to yield to the forces that wish to obstruct it, he pointed out.

In a newspaper article, former long-standing international Chair of PEN International Per Wästberg described the prize for Charlie Hebdo as “a call for tolerance and a broad secular outlook in a time when jihadism is killing Jews, Christians and Muslims”.29

Concluding reflections

Democracy, freedom of expression and open society are undergoing more difficult ordeals than they have done for a long time. From certain aspects, it can be said that freedom of expression always finds itself under fire. Sweden has been comparatively fortunate until now, but is naturally influenced by ideological contradictions both within and outside the country. Extreme ideologies have naturally also found a foothold here, in pace with globalisation, the Internet, access to weapons and the use of terror.

My discussion of cases in Sweden where freedom of expression has been questioned deals with areas that can be called general. It is when idealistic and totalitarian movements unite (as against Bonniers as publisher of Agnes von Krusenstjerna’s novels) that subversive events in the wider world influence a society (for example during the restrictions on freedom of expression in the war years). The same thing is happening uninterruptedly, on a daily basis, in many quarters and leads to the fight for democratic values.

Further, it occurs when representatives of a bigoted morality demand a stop to the rights of authors to express themselves (many examples from our time can be given, as well as Vilhelm Moberg’s situation after The Emigrants). It is when the powers-that-be, as often happens, strike back when they feel themselves to be under attack (such as during the IB Affair). It is insults against others and slander (as in the Märit case). It can be mentioned that indictments in press libel cases during the period when Märit was convicted in Stockholm Municipal Court (verdicts from 1951 to 1969) number more than one hundred – the majority against pornographic, but some against political, works (in these cases chiefly against alleged Nazi sympathies during WWII). I note that the prosecutor’s indictment against
sexual subjects were dismissed more and more often towards the end of the 1960s, which reflects the sexual liberalisation of the period.

This implies that freedom of the press and of expression, to an extent, are determined by the period. It has a core, however: standing up for human dignity, expressed in documents such as the UN Universal Declaration of Human Rights. If those responsible for freedom of expression in Sweden have largely displayed awareness of literature, as my review shows, it can be argued that their role has been fairly hands-off. Perhaps in the future, there will be reason to mark what is to be protected more strongly, and what is not.

Before the law, literature and art have no privileges as compared with other expressions. On the other hand – and this should be emphasised – they have a distinctive character. This distinctive character, in comparison with other forms of expression, consists of the many layers that literature and art work with: desire, suffering and suppressed feelings – not always of a pleasant kind. Art strives to unveil “the whole person”, as Eyvind Johnson expressed it in his novels about Krilon in the 1940s. It lies in the nature of the matter for it to not infrequently challenge various opinions.

If legislation and a temperate application of the law was a defence of literature through an often-respectful interpretation and reading during the period of time I have discussed, it must be added that literature and art in Sweden, from the beginning of the 1900s and beyond, have without a doubt contributed to the democratisation of society. They have broadened our outlook on people and our tolerance, also through lively public debate. Conversations – and some serious squabbling – about literature and art are a part of democracy. In open debate, values and undercurrents in society find expression as a sort of societal subconscious.

Being able to express yourself freely is the cornerstone of democracy. Freedom of expression is not only dependent on legislation, but naturally also to a great degree on the amount of moral courage its defenders are able to show. There is reason to be reminded of this in the face of an uncertain future that, in various ways, seriously threatens important democratic values requiring public spirit, wisdom, knowledge and bravery among its citizens in order to maintain it.
Notes

2 See Svedjedal 2011.
5 Boye 1934.
7 Wiktorsson 2010.
8 Larsson 2004.
9 Wiktorsson 2010.
10 See inter alia Boëthius 1991.
13 Witt-Brattström 2014.
16 Luterkort 1996.
17 Axberger 1984.
19 Berggren 2010.
20 Axberger 2013.
21 Axberger 2012.
22 Persson, Leif G.W. 2011.
23 Persson Carl 1990.
24 Rauscher 2004 and 2012.
25 Lööw 2015.
29 Wästberg 2015.
30 See, for example, Respons 1/2015 and 2/2015 with contributions by Anna Skarhed, Hans-Gunnar Axberger and Lars Grahn.
How to foster the ideal citizen
One century of Finnish freedom
of expression and censorship

Kai Ekholm

Summary
In Finland, there have been different forms of censorship and regulation over the course of the last five hundred years, ever since the time of Gustav Vasa. This article looks at Finnish censorship during the age of independence and concludes with regulation and censorship in the cyber era.

I begin with a discussion of censorship concepts and attendant phenomena: inquiries, expressions of concern, complaints and attacks are often experienced as censorship although censorship, strictly speaking, is based on law. Our conceptions and our terms are a remnant of the era of printed communication.

Censors’ early tasks focused on the printed literature of the Reformation. In the spirit of that movement, they fought the Finns’ ancient religion as well as Catholicism. The immodesties of popular poetry were also cleansed very carefully so that it might be appropriate for the ‘hands of gentlewomen’. Indeed, this can be observed in the national epic poem, Kalevala.

The article divides censorship in the age of independence into four periods, and gives detailed examples of each:

1917–1939 – the period of limited freedom of expression
1939–1947 – war and censorship
1947–1994 – battle of values and foreign policy self-censorship
The book wars of the 1950s and 60s occur during this period, as do self-censorship and the Finlandisation era.
1995–now – the period of the EU and the Internet

The most interesting of these periods is the Finlandisation era, also known as the self-censorship era. Self-censorship was based on the Paasikivi-Kek-
konen line, which was monitored in several different ways. Ahti Karjalainen, the Foreign Minister, stated that the press ought to monitor foreign policy, the Finnish Broadcasting Company (Yle) was the harbinger of institutionalised self-censorship, and the journalists’ editors also monitored to ensure favourable content. The background to this was the extensive ‘eastern trade’ between Finland and the Soviet Union, which has been shown to have been the Soviet Union’s method of controlling domestic policy and communication in Finland.

I then broaden the analysis of censorship to include the cyber era, and refer to the study I carried out a few years ago in which I specified ten trends in the cyber era that should be monitored.

What do we mean by censorship?

What do we mean by censorship? It is one of these benign terms about which we all seem to have the same opinion and which carries a strong moral charge. Everything to do with censorship is repugnant, distant and occurred as if by chance. No one wants to associate censorship with the present.

Our brains have a tendency to think in binary terms when it comes to censorship: in our country, we have absolute freedom of expression; censorship is a thing of the past. We are not part of it. Unfortunately, this is not the case.

Freedom of expression is always a historical characteristic in each separate period, associated with power, pressure, conflicts of interest, politics and the establishment of limits on the press. In actual fact it is only the result of all this that we call freedom of expression. And once we have defined it we are already on our way somewhere else.

When we speak of censorship we often mean censorship in the classical sense, with book burnings, ruined works and writers’ destinies. But regulation, censorship and filtering show many nuances and forms, particularly so in an era when it is not recognised that there is any official, legally-based censorship. Political persuasion, agreements, filtering and pressuring are familiar elements from, for example, the period of Finnish self-censorship, which will be dealt with in greater detail later.

Few people acknowledge their role as censor: each one merely has their own, benign and ‘sound’ agenda to promote; and now we just have to deviate slightly from the usual procedure and refrain from publishing this article or this work … If we do this we will be acting wisely and everything will soon return to normal. This was the justification for not publishing Alexander Solzhenitsyn’s *Gulag Archipelago* in 1974, for example.
Finnish history furnishes five hundred years of various phases of freedom of expression, control and censorship after 1526 when Gustav Vasa closed down the printing press in Söderköping for publishing anti-reformist writings.

It is very brave to think that all of this is definitively over. Finally and conclusively, we should not ask ourselves why we have censorship, but what kind of regulation and censorship we have. I do not know of any society where full and absolute freedom of expression could be said to prevail. Censorship is always a matter of ratios, where the interpretations of contemporaries and their descendants change very quickly.

It is also good for the censorship researcher to be clear about his/her own agenda. It is not particularly beneficial to moralise or try to find offenders and victims. Censorship research tries, at best, to understand the censors’ views and find general models for their activity.

Knowledge of censorship is knowledge about ourselves, our fears, our hopes and our level of education. And also about where we, as a nation, have been heading.

The history of censorship and freedom of expression is our shared learning process. Paradoxically it must be said that without censorship we would not know as much as we do, and that without censorship it would be impossible to define freedom of expression. And it also has to be said that these must never be forgotten, even if they now appear comical or historical.

In this article I examine the phases of freedom of expression and censorship in Finnish society over the past century. With readers in Sweden in mind, examples have been given a somewhat more detailed background than a purely Finnish readership would require. The material consists of hundreds of newspaper articles, other publications and interviews, as well as books and articles I have written over a period of approximately twenty years.

Still I do not in any way feel as if I own this history; anyone with sufficient assiduity could have compiled the information below from the press and other media in Finland.

We generally associate censorship with bans on literature, the press, films or art. The object of the ban is an actual work, the distribution of which the authorities intend to prevent.
Whereas the object of classical, hard censorship was the book, the softer censorship of the modern era has focused on the reader. This means control of media and publishing systems in the broadest sense — in which entire censorship systems of rules are created where everyone, from the writer to the publisher and the reader, knows what can and cannot be published. The period of Finnish self-censorship, or Finlandisation — dealt with in detail below — is a typical example of soft, presentational censorship. When foreign minister Ahti Karjalainen explained in public in 1974 that the press was responsible for monitoring Finland’s foreign policy, the message tells us something essential about the institutionalised self-censorship of that period. It was complied with by the Finnish Broadcasting Company, by every daily newspaper and publisher as well as by individual writers and columnists. Anything else would have been pure madness.

The term censorship is often used arbitrarily. It pays to define as censorship only the direct form which is based on law so, for example, the previewing of films — and its cessation — are given distinctive contours. After that everything else is freedom of expression and various expressions of it, and these are periodic and genre-specific, making them interesting objects of scrutiny.

In the United States the following terms have been used which have a censorship-like import. Yet not all of them are censorship, and they illustrate very well the necessity of terminology and precision.

**Inquiry.** Requests for information, normally unofficial in character, by means of which you wish to determine whether an object in e.g. the library’s collection is ‘sensible’ — in other words, why it has been included in the collection.

Related actions can be described using the following terms, for example: **Expression of concern.** An inquiry with an implicit value judgement. The inquirer has already adopted a value-judging (censorious) attitude to the material in question.

**Complaint.** A formal, written complaint, submitted to the library and concerned with the inclusion of some specific material, or its suitability.

**Attack.** Public statement regarding the value of some specific material; the aim is to obtain general approval of the action. In this connection, the book is generally designated as ‘challenged’.

And finally, true **censorship.** The material is removed from the public collection by a state authority.
Background: the frightful popular tradition

We have already noted that the history of Finnish censorship stretches as far back as the art of printing books and the use of language. It was preceded by a filtering of the popular tradition, and consequently we now read Kalevala, for example, in a version which is also suitable for ‘the family’s womenfolk’ and also as school reading matter these days. If it were to be published in its unadulterated form, with its immodest expressions, some of its elevation as national epic might be lost.

From Lönnrot’s old Kalevala and Kanteletar were excised, at Europaeus’ insistence, certain risqué turns of phrase, so ‘that the Kalavela would be appropriate also for female gentlefolk’. According to the old Kalevala, Lemminkäinen’s rampages among the island’s girls left no one ‘jonk ei maloa (= halkeama, rako) maannut, käsi-vartta vaivutellut’ (‘with whom he had not lain’).

In its corrected form: 'Kunk ei vierehen venynyt' (’next to whom he had not lain’). (In Lars Huldén’s and Mats Huldén’s translation from 1999, this passage instead reads ‘no one … was there in whose home he did not lay, on whose arm he was not received’.)

The popular tradition has been filtered by singers, collectors, editors and publishers. Singers left out parts of the incantations lest they lose their power. The singer might also be afraid of being dragged before a tribunal, charged with heathen trickery. Furthermore, they might also recite a poem or proverb more provocatively to a male collector, for example.

In 1783 Georg Wilhelm Londicer, a printer, published a booklet entitled Aenigmata Fennica. Suomalaiset arwotukset/wastausten kansa (’Finnish riddles/with answers’), compiled by Christfrid Ganander, who was assistant rector in Rantsila. At least three different editions of the work were published, but only 5 copies remain. The collection of riddles or proverbs was not appreciated in the same way as religious literature, and could be burned with abandon. For that reason, the work was a rarity by the 19th century, as Lönnrot noted about the precursor to his collection. The more extensive edition contained 39 riddles that were later removed, e.g. ‘Yxi musta mulli myllittelee yhdes kirjawas karjas?’ (’A black bullock bellows with the motley cattle’) (the priest in church), ‘Oris orpo lijna harja, sei-
so pyhällä sialla, wihannalla mätt- ähällä?’ (‘A lone stallion with a blond mane, stands in a sacred place, in the verdant forest’) (the church), or ‘Sata sarkkinen, tuhat turkkinen, pellollen meni, perset näky?’ (‘A hundred slips, a thousand furs, went out in the field, arse showing’) (the hen). Between 1829 and 1831 Elias Lönnrot published the collection Kantele taik-ka Suomen kansan sekä vanhoja että nykyisempia runoja ja lauluja I–IV (‘Kanteletar, or the Finnish people’s old as well as newer poems and songs I–IV’), which contains popular poetry.

Lönnrot’s archive, Lönnrotiana, includes a note attached to the lampoons on priests: ‘Minä muistutan teillen, että jos työ tätä runoja näytät-ten muillen niin älkäät sanoksi minun tekemäkseni.’ (‘I remind you that should you show these poems to others, don’t say that I made them.’)

Regulation in Finland has a long history, and it could be said that Finland has been an excellent laboratory for freedom of expression and censorship.

The censors’ early tasks

The history of Finnish censorship really begins with the Reformation, in the same way that printed literature does. In the spirit of the Reformation, the struggle was against ancient Finnish folk beliefs as well as Catholicism. Jacobus Finno deleted the most visible Catholic features of the Piae cantiones song collection. Hemminki of Masku changed the songs’ Catholic spirit to a more Lutheran one in connection with their translation into Finnish. When Finno published the first Finnish-language book of psalms in around 1583, he forbade the use of the Kalevala metre in Finnish poetry. So the reformers came to suppress the finest expressions of their mediaeval heritage: poetry composed in Kalevala metre and pan-European religious poetry. Consequently the growth of printed Finnish poetry was stunted and it remained stiff and clumsy for several centuries.

Johan Cajanus’ Yxi hengellinen weisu (Etkös ole ihmis parca aivan arca) (‘A spiritual song’, translated into Swedish by Frans Michael Franzén with the title ‘Förgänglighetens’, or ‘Transience’) became, at the end of the 17th century, a source of discord between Cartesianism and orthodoxy. Kari Sallamaa, who has studied the Reformation Period, observes that as the 18th century ended and the 19th began, the hymn that echoes with the sublime music of the heavens was turned into vapid, religious, watery gruel. As such it may be read and sung in the current Finnish book of psalms, Number 612.

After the Finnish War, Finland became part of the Russian Empire as an autonomous Grand Duchy. The Swedish laws were maintained, and printing activities were affected by the 1774 Ordinance on the Freedom of the Press.
With reference to the old regulations, Jacob Judén’s work, *Anteckningar af tankar uti varianta ämnen* (*Notes on thoughts regarding diverse subjects*), was burned in Viborg Square in 1829. All of the 190 copies that the authorities could lay their hands on were burned; today only a handful of copies remain in the largest libraries and archives, including the University of Helsinki Library and the Finnish Literature Society Archives. Judén’s work was the only one to be officially burned during our censorship history. (Though Mykle’s work was later burned.)

I am forced to omit many important phases, including the Period of Autonomy, and move on to censorship in the Era of Independence. For anyone researching the Period of Autonomy, the journal of the National Board for Press Matters (Överstyrelsen för pressärenden), which is kept in the National Archives, is a treasure. All works subjected to detailed review were registered by hand in long lists that include familiar names: J L Runeberg, Juhani Aho, Imari Kianto …

**Finland during the Era of Independence**

According to the 1919 Constitution there is no pre-censorship in Finland; the government guarantees citizens press freedom. However, pre-censorship has been applied to cinema and video films.

With regard to censorship, we can discern four periods in the history of independent Finland:

1917–1939 – the period of limited freedom of expression
1939–1947 – war and censorship
1947–1994 – battle of values and foreign policy self-censorship
   The book wars of the 1950s and 60s occur during this period, as do self-censorship and the Finlandisation era.
1995–now – the period of the EU and the Internet

**1917–1939: the period of limited freedom of expression**

* A poisoned flood pouring into homes, and the first book wars

The 1920s saw the publication of a large number of romantic novels which had been translated from German and English, as well as other light literature – including detective stories – in Finnish translation. Lightweight
love stories by the likes of Hedwig Courths-Mahler, Nataly von Eschtruth, Charles Garvice and Ethel M Dell were translated into Finnish. This surge of translations received an ungenerous welcome by critics, who called it a poisoned flood pouring into homes. To some degree, libraries also acquired these works.

A considerable number of detective stories were produced during the first years of the 1930s. Books by Freeman Wills Croft, S S van Dine, Agatha Christie and Edgar Wallace, among others, were translated into Finnish. The official book catalogue, Resonerande bokkatalogen, conceded that the authors were skilled, but disapproved of crime as the theme of these books. The attitude towards Maurice Leblanc’s gentleman thief, Arsène Lupin, was negative. Among the authors, David Hume, Stein Riverton and Sax Rohmer received cool receptions. Raymond Chandler’s production was offered to Otava, but to no avail.

The 1930s, with emergency laws and emergency ordinances, was a lively time for convictions in press freedom cases. The Ministry of Justice press freedom ombudsman monitored abuse of the law. They were particularly keen on prosecuting journalists.

Literature, too, had its fair share. The original and anarchistic working-class poet, Kaarlo Uskela (1878–1922) had published a collection of poetry entitled Pillastunut runohepo (The runaway poem-horse in 1921.). In 1933 it was decided that the remaining copies were to be seized and destroyed. The atheist and anti-clerical poems were the most flagrant. Most of Uskela’s other works had already been confiscated, back in the 1910s.

In 1933 it was decided that the remaining copies were to be seized and destroyed. The atheist and anti-clerical poems were the most flagrant. Most of Uskela’s other works had already been confiscated, back in the 1910s.

In the 1930s, Elli Tompuri’s poetic soirée Det vackra Tyskland – bränd poesi (Beautiful Germany – burnt poetry) was denounced to the State Police. Katri Vala’s poem Aseettomuuden voima (The strength of freedom from weapons/conscientious objection) was used at least twice as grounds for prosecution for high treason. An athletics association was disbanded due to Vala’s poem Uhrijuhla (The sacrificial party), as it was regarded as unpatriotic and treasonable.

In many of his works, Pentti Haanpää mocked the official truth and the powers-that-be. Between 1933 and 1934 he published the dialogues Pulamiehet puhelevat (The men of the crisis speak) and Pulamiehet lähtevät liikkeelle (The men of the crisis go on their way) in a periodical, Tulenkan-tajat. These deal with what was termed the Horse Rebellion in Nivala. The Ministry of Justice brought an indictment and the municipal court convicted Haanpää as he had used Bible quotes and scorn to spread statements that were intended to insult public authorities and the lawful social order.

Haanpää and the editor-in-chief of the publication, Erkki Vala, were fined 2,000 Finnish marks each, which the court of appeal reduced to...
1,600 or 60 days in jail. Haanpää was ready to go to jail, but money was raised in cultural circles for the Haanpää Fund, which paid the impoverished Piipola resident’s fines. In a letter to Vala, Haanpää expressed his wish that the authorities issue regulations for how people described in literature ought to be.

For Erkki Vala this was just the beginning. A second press freedom indictment was brought because he had published, in 1935, excerpts from Jaroslav Hašek’s novel *The Fateful Adventures of the Good Soldier Švejk During the World War*. The sentence, which cited religious values, ordered Vala to pay a fine. After having published extracts from European newspaper reports on the Antikainen Trial, Vala atoned for his crimes by spending a month in the county jail on Skatudden, in 1936.

The WSOY publishing house had demanded that Haanpää remove risqué expressions of barracks humour from the short stories in *Kentä ja kasarmi* (*The field and the barracks*). Haanpää switched publishers to the social democratic Kansanvalta (1928). In the ensuing book war, as is well known, Haanpää’s literary channels were closed to him for ten years. More than ten publishers turned down *Noitaympyrä* (*The witches’ circle* written in 1931, published in 1956). So did Tulenkantajat under the leadership of Olavi Paavolainen. Mika Walteri published, evidently on commission, the counter-work *Siellä missä miehiä tehdään* (*Where men are made*, 1929).

The smoke-cottage atmosphere (a Finnish description meaning intellectually suffocating) was evident in translated literature, too. On 16 February 1935 the Chair of the Union of Finnish Writers, Eino Railo, rejected Anglo-Saxon literature and demanded that foreign literary trumpery be removed from public life in Finland, and also that national self-sufficiency be re-instated. The Union unanimously approved his scolding and enjoined the directorate to put pressure on publishers. It was Kalevala’s jubilee year.

The trend was more towards the kantele (a traditional Finnish string instrument) and the swastika, a cultural excursion to Weimar and the European Writers’ Union led by the new national poet, V A Koskenniemi. Finnish writers had frequent contacts with Germany, even if they were not always apolitical or uncritical. Germany was also regarded as an ‘export destination’ for literature, as considerable interest in Nordic literature was found there.

It was indicative of the self-righteous *zeitgeist* that Mika Waltari, in the periodical *Suomalainen Suomi* (1933:2), argued that modern Anglo-Saxon, French and Swedish literature should not be translated, as it was (1) immoral, (2) poisonous (i.e. intelligent) and (3) seditious, so that in the hands of an undeveloped reader it would incite either vehement support
or resistance. Those who were sufficiently mature and wanted to examine this literature could get to know it via Sweden. Waltari was against translating D H Lawrence, Aldous Huxley, Sinclair Lewis, Theodore Dreiser and Harry Martinson, among others, and accused André Gide of being a homosexual Bolshevik who had already managed to poison an entire generation.

Libraries’ book choices were dictated by Arvosteleva kirjaluettelo (The reasoning book catalogue). Its choices tell us a great deal about prevailing values. When it came to young adult literature, it took exception to Plättä Kiljunen, an anarchistic figure; John Masefield’s *The Midnight Folk* (translated into Finnish in 1928); E F Benson’s *David Blaze and the Blue Door* (translated into Finnish in 1931); Charles Kingsley’s *The Water-Babies* (translated into Finnish in 1931); and A A Milne’s *Winnie-the-Pooh*. These works were considered heavy, strange and of no interest to young people. The first translation into Finnish of J M Barrie’s *Peter Pan* (1922) was regarded as a hotchpotch devoid of nourishment for children’s spiritual being.

### 1939–1947: war and censorship

Pre-censorship in accordance with the Republic’s Protection Law, which was instituted in the autumn of 1939, was directed primarily against the press. The censors at Statens informationsverk (the State Information Agency) also reviewed literature intended for publication between 1939 and 1947, from the beginning of the Winter War until the Peace Treaty was signed in Paris. The information available indicates only a few cases of censored fiction. During the Interim Peace of 1940–1941 and after the cessation of hostilities in 1944, demands were made that Pentti Haanpää remove the word ‘ryssä’ (‘russie’ or ‘russki’) from the work *Korpisotaa* (*The wasteland war*, 1940) and the collection *Jutut* (*Tales*, 1946). Haanpää’s ironic ways with Germans in *Nykyaika* (*Modern times*, 1942) were located at the outer limits of the censors’ sense of humour. Among others, Helvi Hämäläinen’s novel of cultural circles, *Säädyllinen murhenäytelmä I–II* (*A respectable tragedy*, 1941), was pre-censored by its publisher. Its criticism of Germany would likely
have seen it in the hands of the wartime censors if these changes had not been made.

Between 1919 and 1944, almost 4,500 individuals were convicted of high treason, treason or of preparing to commit similar crimes. For political prisoners, many specified books were proscribed even in the 1920s and 30s. The works of Marx were permitted reading at some juncture, as they then had at that point been translated with the Tsar's permission. Pages were cut out of some works in Finnish prisons.

In the 1939–1944 wars, just under 1,000 individuals were placed in protective custody. The corps of critical writers, including the Kiila group’s Elvi Sinervo, Arvo Turtiainen, Jarno Pennanen and Raoul Palmgren were in jail, as was Hella Wuolijoki. Iris Uurto, who described the war in universal human terms, could not get her plays staged by Finland’s National Theatre.

**Books removed from bookshops and public libraries 1944–1946**

After the war, books deemed ‘politically questionable’ were removed, and put out of reach of the general public, on the orders of the Allied (Russo-British) Control Commission and at the initiative of the Ministry of Justice. Only booksellers were given an itemised list of works to be removed. In two circulars, issued in 1944 and 1945, Finland’s association of publishers urged them to remove about 300 titles from their shop shelves and return them.

The number of works removed from libraries exceeded 1,700 titles; in total, more than 30,000 works were removed from public libraries. As no list of books banned in libraries was issued or published, individual libraries were relatively free to choose what they removed and the selection was a mixed bag. At most libraries, the list comprised a few dozen volumes; at the bigger libraries, hundreds.

These works and the process of removing them are described in greater detail in my thesis, *Kielletyt kirjat 1944–1946* (*Forbidden books 1944–1946*, 2000). The works were stored under lock and key in what was known as the libraries’ poison cabinets, or with the police.

Ideas about which books were prohibited for political reasons lived stubbornly on into the 1960s and 70s, despite the fact that municipalities had, in 1958, been given a free hand by the government to return to library shelves the works that had been removed after the Continuation War because they offended relations with neighbours.
Books evacuated because of bombing during the war being returned to the National Library in Helsinki in 1945. Photographer unknown. National Library of Finland.
When the freedom charter was issued in 1958, it recommended that literature which offended relations with neighbours be kept accessible only to researchers, i.e. be held in the stacks of the research libraries. The effects of wartime censorship between 1944 and 1946 were not only time-bound and local, but cumulative and long-lasting as well.

On the orders of the Allied Control Commission, about a dozen pro-German films were banned, and more than 300 book titles were removed from bookshops, while libraries got rid of 1,700 volumes. In 1945, 16 million map sheets were transferred to the Soviet Union in 40 freight cars.

They were released only at the end of the 1980s. The Allied Control Commission even decided that several statues of heroes from the previous wars should be destroyed.

1947–1994: battle of values and foreign policy self-censorship

The period of self-censorship is, of course, linked to events during the past few decades. This tradition can be seen to have begun with the measures, described above, after the 1944 cessation of hostilities. During this period there were also what may be called the book wars of the 1950s and 60s.

This was a period in which Stalin pursued a strong foreign policy. Paasikivi quoted Bismarck: “the government and the people will have to pay for the windows broken by journalists”.

In 1948 the principal editors of Karjalan Maa and Keskisuomalainen were indicted because they had described Zhdanov’s funeral in an unseemly manner, and had insulted Stalin with the headline ‘Stalin killed Zhdanov’. This was a period in which Stalin pursued a strong foreign policy.
Political censorship and freedom of expression in Finland followed the vicissitudes of the Soviet Union. The détente after Stalin’s death was followed by the success, for example, of Arvo Poika Tuominen’s memoirs in 1956–1958. There was enormous interest in ‘real’ life in the Soviet Union, and the books made Poika Tuominen a millionaire. In 1971 Väinö Leskinen, the Foreign Minister, noted in an expression to the publishers that Poika Tuominen’s memoirs and Unto Parvilahdi’s Beria’s garden had laid the foundations of the ‘night frost’ of 1958. He took Khrushchev’s recent memoirs as an example, and warned of new foreign policy problems.

In 1958 a Soviet diplomat objected to Kari Suomalainen’s cartoon of Khrushchev. That same year, publication of Minister Yrjö Leino’s memoirs was shelved. Ten years later, Ambassador Kovalyev disapproved of the label on Karjala beer bottles: the 16th-century coat of arms jarred with current political semiotics.

The most well-known case of self-censorship occurred in 1974, when the Tammi publishing house decided not to publish Nobel laureate Alexander Solzhenitsyn’s The Gulag Archipelago in Finnish, with the view that it was not in the country’s general interest to do so. The decision was made a few weeks after the writer had been deported. Jarl Hellemann described how Prime Minister Kalevi Sorsa had viewed publication as undesirable. The news spread quickly abroad via the Swedish daily Expressen.

Tammi had published all of Solzhenitsyn’s earlier work, as well as Pasternak’s Doctor Zhivago, which had been a sales success. Tammi signed over the rights to The Gulag Archipelago to Wahlström & Widstrand, a Swedish publisher that later, probably as a result of pressure, renounced the continuation of the project. Kustannuspiste, a Finnish publisher, issued the later parts as well as the works Kirje Neuvostoliiton johtajille (A letter to the Soviet leaders), Lenin in Zürich and The Oak and the Calf. The same publisher released Andrei Sacharov’s My Country and the World and Andres Küng’s What is happening in the Baltic? (Küng’s What is happening in Finland, 1976, is full of documentation of self-censorship).

In Finland in those days, no works were published which dealt with non-Russian Soviet nationalities, Soviet Jews or Soviet Christians, and no works by New Left sympathisers with a critical stance towards the Soviet Union.

There was, however, a vigorous and critical debate alongside the official foreign policy line. Sune Jungar described the unanimous reception of Yuri Komissarov’s work, Suomi löytää kinjansa (Finland finds its line) as slavish grovelling before the message of the easterly wind, and added that this aroused puzzlement and contempt among enlightened Soviet commentators. Johannes Salminen regarded the reception of Komissarov’s
work as ominous. The book discussion in the House of the Estates was subdued by President Kekkonen’s presence in the chamber.

Self-censorship reigned at the Finnish Broadcasting Company. In 1973 the Foreign Minister, Ahti Karjalainen, suggested that a regulation be added to the Finnish Broadcasting Company’s charter obliging it to toe the official foreign policy line in its programmes. The proposal met with fierce resistance and was abandoned.

When Swedish television in 1972 aired the film *A Day in the Life of Ivan Denisovich*, which was banned in Finland (and which Jörn Donner was trying in vain to import), the relay transmitter on Åland was shut down. A musical called ‘Silkesstrumpan’ (The Silk Stocking), based on the film *Ninotchka* with Greta Garbo, was aired in 1973 and immediately condemned as anti-Soviet. The broadcaster MTV (a Finnish commercial broadcaster, not the music channel) described the event as an accident, and this line was echoed by Pekka Tarjanne, the Transport Minister.

On 21 May that same year, President Kekkonen gave his expression in Tampere about Western information imperialism, calling for a better balance in the exchange of programmes between East and West. The position of Soviet films improved by 50 per cent. At the same time, publishers got together to publish a Soviet literature series, in which the selection was conventional. Today these books are collecting dust on library shelves – although significant fundamental works were also published, in the reigning pro-Moscow spirit.

At the inauguration of Finlandia Hall in 1971, the Sibelius Academy had intended to perform *Ignis pro Joanne Palach*, a composition by Jan Novák, an émigré Czech, dedicated to the memory of Jan Palach, the self-immolator. The Secretary-General of the Finnish Peace Committee (Fredskämparna/Suomen rauhanpuolustajat), Mirjam Tuominen, appealed to the Ministry of Education, and the piece was not performed. The Finnish Peace Committee was a pro-Soviet peace movement whose attitude to the Soviet Union was one-sided and uncritical.

The term ‘self-censorship’ was first launched in public by the artist and writer Carl-Gustaf Lilius, in the magazine *Index on Censorship* and the periodical *Kanava*, in 1975. That year also saw the publication of an Amnesty International report on prisoners of conscience in the Soviet Union – which was subjected to a conspiracy of silence in the Finnish press, unlike in the Swedish press. Self-censorship had developed its own internal élite-speak that used only oblique references when dealing with criticism of the Soviet Union.

Self-censorship continued during President Koivisto’s period in power. Pentti Syrjä’s *Gruppa Finljandija, Neuvostokomentajan roolissa* (1986)
(Gruppa Finljandija, in the role as Soviet commodore) dealt with the 1971/72 academic year at the Frunze Military Academy. President Mauno Koivisto claimed, in his capacity as Supreme Commander of the defence forces, that Syrjä had revealed top secret material, including data about the Soviet armed forces.

Hans Metzger was the German press attaché during the war. Concerning his book, Poliittiset aseveljet (Political Brothers-in-Arms, 1986), Otava agreed to Matti Kekkonen's demands. The book was withdrawn from the Christmas market and only published a year later in 1986.

**Beat, sperm and blasphemy**

On 13 October 1955 in San Francisco, a wine-oiled poetry circle of a hundred or so members were listening to new poets. Allen Ginsberg began his poem *Howl* calmly, but was soon chanting ‘like a Jewish cantor’. Jack Kerouac egged the poet on, shouting ‘Go go go’, and soon the audience joined him. Lawrence Ferlinghetti asked if he could publish the manuscript of *Howl*, and within a year he was in court fighting a pornography indictment. The work was cleared, with the judge noting that it had redeeming social value, and before long more than 50,000 copies had been sold.

In Finland six years later, the periodical *Parnasso* (1961) published part of *Howl*, translated into Finnish by Anselm Hollo. Replacing the words ‘fuck’, ‘cunt’ and ‘sperm’ as well as ‘cock’ were rows of asterisks (**`). In 1963 Tajo, a small publisher in Turku, issued Matti Rossi’s and Anselm Hollo’s uncensored translation into Finnish of *Howl and other poems* (*Huuto ja muita runoja*). The specialist limited edition, as the publisher called it, never reached a wider public.

It was not until a recording of *Howl* from the 1969 Pori Jazz Festival, produced by Henrik Otto Donner, was shown before the late news broadcast on TV that 83 members of parliament were prompted to ask a parliamentary question about the matter, with Arne Berner (of the Liberals) as the principal signatory. They asked whether the programme fulfilled the requirements in Yle’s charter. The Ministry of Communication and Public Works decided, after having interviewed the management of Yle, that it did not. The Finnish Broadcasting Company sanctioned Pekka Lounela, who was responsible for the programme, with a reprimand and the company’s administrative council was urged to practice stricter control. This also amounted to an attack on Eino S Repo’s broadcast radio policy. The Swedish daily *Aftonbladet* was perplexed that a tame poem could cause a tremor in the country that had produced Elmer Diktonius.
How to foster the ideal citizen

Henry Miller’s *Tropic of Cancer* was banned in the United States for 30 years. In a very close vote, the Supreme Court only lifted the ban in 1964. In May 1962, the Finnish Ministry of Justice decided that Pentti Saarikoski’s Finnish translation of the book was to be confiscated following a verdict from the Public Supervisory Board for Immoral Publications. The rights to the book had been transferred to Gummerus by Caius Kajanti; Mykle’s *The Song of the Red Ruby* had just been condemned and burned. Gummerus’ literary director, Ville Repo, thought that the big publisher would be spared censorship.

On 3 July Jyväskylä municipal court sentenced Gummerus’ Managing Director, Mauno Salojärvi, under Section 1, Item 1 of the Law on the Suppression of Immoral Publications, to fines and to forfeiting the income from the book to the state. The remaining copies of the work were awarded to the state and were to be destroyed.

Pentti Saarikoski, who was present in the courtroom, applauded loudly when he heard the sentence and was fined for contempt of court. The work was published again in 1970.

A book war is usually initiated by an informer who is running errands for the moral majority, as Pekka Tarkka noted. Paavo Rintala’s *Sissiluutnantti (The long-range patrol*, 1963) was reported by Seppo Simonen at *Yhteishyvä* magazine. Hannu Salama’s *Juhannustanssit (Midsummer Dances, 1964)* was reported by Archbishop Martti Simojoki. The famous book war was thus joined, as Pekka Tarkka has documented in his Salama monograph and elsewhere. The Minister of Justice at the time was J O Söderhjelm, who had experience of the Mykle affair.

The end is well known. Salama was convicted of ‘intentional blasphemy’ on 20 September 1966. Two years later President Kekkonen annulled the conviction.

In 1990 the work was published in its unabridged form for the first time since 1966.

Otava’s lawyers observed in their expert opinions that the zeitgeist had changed and that ‘jokes about central passages from the Bible and travesties of so-called sacred objects have almost become everyday occurrences in public life’. An indictment for blasphemy had not been brought in over 20 years.
The cases referred to above indicate the division into official and unofficial censorship. The former is carried out by means of authorisation on the basis of law (Salama, Miller), the latter via pressure groups and organisations representing the ‘moral majority’ (Ginsberg, Rintala). For that reason, censorship is difficult to predict and to fight.

The view in Finland has always been that the mood in Sweden is much more tolerant. Agneta Pleijel’s contribution to the present volume offers an interesting point of comparison. A more extensive assessment has not been made.

Generally speaking, Sweden has been a refuge for Finnish intelligentsia. The historian Matti Klinge noted in 1991 that the most obvious antidote against ‘Finlandisation’ over the years has been to read the Stockholm newspapers, which indeed is something many here have done.

Gun Forslund looked at 1960s Nordic librarians’ attitudes to controversial books in her thesis Dangerous books? PR views on libraries’ acquisition of controversial literature (1962). The attitude to books on sexuality was positive, for example – librarians saw themselves as modern, broad-minded and unprejudiced.

Only the Finnish librarians were more old-fashioned: less literature on sexuality was acquired, and the works were more likely to end up in the ‘poison cabinets’. They took a more cautious line on the Kinsey Report, for instance. When the questions concerned works of fiction, e.g. Mykle and Miller, the replies from Finland were not valid comparisons since those works had been confiscated there. At several libraries in Finland there was a feeling of pride about the fact that their decision not to acquire Mykle had been made before the confiscation. On the other hand, books that were inappropriate in Swedish libraries, including Ivar Lo-Johansson’s Lyckan (Happiness), the Kärlek (Love) anthology and Annakarin Svedberg’s homosexual account Din egen (Your own), were freely available at Tampere’s municipal library, for example.

Mykle’s Song of the Red Ruby caused debate in library circles as well. Helle Kannila (Kirjastolehti, 1957, p. 171) dealt with Doctor Vilho Suomi’s negative view, which had been published in Uusi Suomi, and defended the work’s artistic qualities. Kannila often assumed the role of mediator in censorship issues, as she did here: there was no recommendation to acquire the book, but neither was there any defence of opposing views (!). Under the heading Miksi juuri Myklessä olisi vaara? (Why should Mykle in particular be dangerous?) (Kirjastolehti, 1958, p. 81), Raoul Palmgren asked why a literary-moral risk was perceived in a realistic sexual account that describes mores of the time. Palmgren cited the medical opinion that had been presented in connection with the Mykle affair in Norway, according to which erotic descriptions were not harmful to young people. In the doctor’s view, a lack of knowledge about these matters was more serious.
The libraries’ poison cabinets

‘Poison cabinets’ was the name given to storage cabinets kept in the library staff office which contained books that were lent only to adult borrowers. The following books, for example, were kept in the poison cabinet at Lahti Municipal Library in the 1950s and early 1960s:

Aymé, Marcel *The Green Mare*. Kustannusosakeyhtiö Fennia, 1949. The work described French country life; the book has also been made into a film.


Lawrence, D H *Lady Chatterley’s Lover*. K J Gummerus, 1950. The first Finnish translation of Lady Chatterley’s Lover, which was published after the rudest bits had been cleaned up somewhat. An uncensored version of the work was published later.

*Encyclopaedia of Sexual Knowledge*. A Costler, ed. Kustannustalo, 1951. A sex manual translated from English. The preface states that such publications are necessary since the liberated – not to say the wild – social life following the war, and women’s emancipation, requires the person of today to know more about sexual life than previously was the case.


(From Lahti Municipal Library Report, 1994)

1995–now, the period of the EU and Internet

In today’s information society we are not living in a time of remembering but in one of growing oblivion.

The last few years have seen historic upheavals for freedom of expression, which have left lasting scars on the media, communication, political history and civil activism.

Despite the encouraging signs of change and expanded freedom of expression brought by the Arab Spring, the international picture remains gloomy.
One in four citizens around the world lives under censorship. Internet censorship and information surveillance are approved all over the world. The principles and assumptions underlying surveillance are no longer questioned, and their justification is no longer sought. Increasingly it is instead simply a question of pondering what can be placed under surveillance and how. The next step in Internet development, the internet of things, threatens to extend real-time information surveillance into every part of our everyday environment.

Between 2010 and 2012, Päivikki Karhula and I carried out an international study of Internet surveillance, financed by the Helsingin Sanomat Foundation. We concluded that there are ten trends in the online era that we need to monitor (http://www.sananvapausjasensuuriverkkoajana.com/artikkelit/10trendsFIN.html):

**Introduction**

1) ‘The free internet is dead’ – surveillance has become global.
2) Western countries are applying exaggerated emergency access.
3) The complexities of Internet censorship and information surveillance.
4) The criminalisation of everyday life.
5) The internet of things – expanded surveillance of individuals and communication.
6) Database citizenship – the new form of citizenship.
7) The privatisation of internet surveillance.
8) Stricter copyright and patent laws reduce access to information.
9) The surveillance role is transferred to the providers.
10) The challenge to civil rights and democracy.

The following deals with the first trend:

‘The free internet is dead’ – surveillance has become global

The limits of surveillance and censorship have changed during the Internet period. The early days in the 1990s were characterised by idealism about open and free virtual space. There was hardly any censorship or surveillance. Up until the end of the decade, Internet was free of all surveillance and censorship in most countries, or else was very lightly regulated. Things began to change early in the new millennium, with surveillance increasing steadily and eventually becoming more specific and finely meshed.

Censorship and surveillance have become internationally accepted. In 2010 the Internet was subject to censorship in more than 60 countries,
and in many of these laws had been passed that limited the freedom of expression of citizens and the media (Reporters Without Borders, 2010). Surveillance directed at citizens has also increased, as many countries have made access to the web conditional on the identification, licensing or registration of users. In many countries, user opportunities to protect their communication through encryption have also been reduced or prevented.

Different forms of surveillance have grown, areas under surveillance have expanded, and surveillance has become more sophisticated, a trend that can be observed in both democratic and authoritarian countries. While the Arab Spring showed that Internet and social networks can also be used effectively to promote freedom of expression, authoritarian governments responded to activist protests by applying harsher measures and increasing surveillance.

The overall surveillance picture is gloomy: Internet censorship continues to increase, but information surveillance is increasing even more. Information surveillance has also become ever more intrusive (Reporters Without Borders, 2012).

Internet surveillance works very differently in different countries. The reasons for the surveillance, the methods used, the institutions that carry it out and the nature of sanctions all vary greatly. Some countries apply extensive surveillance systems covering their infrastructure, and impose severe punishments for those who break the rules. In other countries, censorship is only directed at certain limited areas, and criticism of censorship practice is allowed. This latter type is typical of Western democracies. The differences can be explained by the countries’ legal and economic systems, their administration types and the state of their Internet infrastructure.

The toughest and most extensive surveillance is currently in China. By using China as an extreme example, Evgeny Morozov has shown in his important book, *The Net Delusion*, how dictatorships effectively use the information network against their citizens. In China there are 20,000 cyber cops who scrutinise citizen Internet use. ‘Human search engines’ literally fetch people opposed to the government from their homes and hold them to account for their words. An elderly man in a rural village, who had criticised the government online for polluting the river, was picked up at his home and put on trial for what he had written.

The European countries that have recently expanded their censorship practices include Hungary and Turkey. In Turkey, all Internet users were ordered to apply a compulsory filtration program. So far, though, only 22,000 of the country’s 11.5 million Internet users are actually using it (Reporters Without Borders, 2012).
Governments are the central authorities pursuing Internet censorship but in fact most of the Internet’s virtual space is owned and controlled by private companies. However in practice the effects of censorship are often applied by various actors: if governments have wanted to expand surveillance of users they have often imposed demands to that effect on private actors. Moreover, public and private actors now collaborate on many projects to promote surveillance and censorship. Still, private companies can hold significant independent power: Google, Facebook, eBay and Amazon are good examples of such multinational companies.

Just as the differences and distribution of roles between democratic and totalitarian states as promoters of surveillance and censorship are unclear, so too are the differences between actors in the public and private sectors. For example, the large-scale Chinese firewall was built with support from major Western IT companies such as Cisco, Microsoft, Yahoo and Google (BBC News, 2010). European data technology companies have sold surveillance technology to countries that violate human rights, including Egypt, Libya, Syria and Iran. These countries have used this technology to monitor the activities of dissidents, human rights activists, journalists, student leaders, minorities, trade union leaders and political opponents. It has also been possible to use the same technology to observe the entire population (Privacy International, 2001a).

In closing

The poet Risto Ahti notes that ‘intelligence is fast, wisdom is slow.’

History is not a classroom where there are correct and incorrect answers. Often it is just people trying to promote their cause in the best way they know how.

It is nonetheless a proof of wisdom to learn from the past and from how knowledge was constrained, and to try to ensure that, in the future, knowledge will be multi-faceted and free.
Openness and the freedom to communicate information

NILS FUNCKE

Introduction

There are a number of insightful, a handful of well-written and one or two superlative descriptions of the significance of transparency in public affairs. Herman Ludvig Rydin’s, from 1859, is among the superlative that sound clear and strong when rendered in modern language.

The interested citizen’s access to official documents amounts to a complete oversight of authorities’ decisions and actions. It constitutes a guarantee for the honesty of officials and the management of public administration, but also for the individual’s civil rights. There is nothing that contributes to the same degree to the development of political life and the improvement of society. Nor can anything be said to contribute more to creating trust between public authorities and citizens than the right to exercise scrutiny and to criticise decisions. It is a condition for the development of society.¹

Herman Ludvig Rydin who, at the end of the 19th century, was one of the country’s foremost expounders of press freedom goes one step further when he extrapolates the consequences for the authorities of his basic approach. Criticism of authorities can certainly be both ‘unjustified and sub-standard’ and expose the authorities to ‘animosity and derision’, he grants.

But even such criticism can, if it is born of good intentions, … have its beneficial consequences. Even if it leads to nothing else, it should at least cause a civil service department, if it understands the importance of general faith in its ability to do good, to endeavour to repel the attack by making clear to the general public the significance of civil servants’ actions and thus exonerate its reputation from unfair accusations.²

By passing through ‘purgatory’ the civil servant and the authority can gain ‘greater esteem and trust’ than if the criticism had never been made. Otherwise the blame can, in Rydin’s view, ‘easily and clandestinely’ grow into a ‘hampering mistrust’ of the authority’s activities.

¹

²
Sometimes it seems as if authorities, rather than building trust, make an effort to create mistrust. The realisation that transparency ultimately benefits their activity, even if it requires extra work and causes annoyance, is not found at many authorities. The Riksdag’s efforts since 1766 to refine and strengthen the system of regulation is of little benefit when the very concept of public access has not sunk in at the authorities, even after 250 years.

One example of this is the Swedish Post and Telecom Authority (Post- och telestyrelsen, or PTS), a national supervisory authority.

Having your cake and eating it

When the European Court of Justice declared the EU data retention directive invalid in May 2014, PTS decided to end its monitoring of telecommunications operators’ obligation to retain traffic data on Swedish telecommunications and electronic communications. PTS explained that Swedish implementation of the directive could not be carried out without contravening the Court’s decision.³

The PTS’ position drew reactions from the Government as well as the Opposition. The lack of traffic data would make law enforcement more difficult. PTS was summoned to the Riksdag Committee on Justice to explain its action, and the Government appointed a special inquiry to look into the matter.

The trade-off between effectiveness of law enforcement and protection of privacy is an issue that engages and upsets people. Revelations in recent years of Swedish and foreign authorities’ surveillance and registration of citizens, irrespective of whether there is any suspicion of crime, have led to protests. For many people, their indignation has led them categorically to repudiate and resist all forms of registration, regardless of their purpose and use.

When the verdict by the European Court of Justice made the issue tangible, and angry winds began to blow, PTS clammed up. The authority’s report into whether Swedish legislation was compatible with the Court’s verdict was not made public.⁴

When the Riksdag Committee on Justice requested written supporting evidence for its decision, PTS responded that it could of course hand over the legal report. But, it added, this would be unfortunate as the report would then become a public and official document.

In a letter to the Committee’s secretariat, PTS Director-General, Göran Marby, wrote that:
Openness and the freedom to communicate information

We would naturally, however, like to provide the Committee on Justice with as much information as possible, and will therefore present here the principal lines of reasoning we have adopted in managing the current situation.

With this letter to the Committee (which was not registered in the Authority’s central register), PTS expected to be able to have its cake and eat it – openness towards the Riksdag but secrecy towards the general public.

Creative attempts such as this to deny the public access may be unusual, or at any rate do not often become known, but examples of plain old obstruction do come to light with frustrating regularity.

Occasionally openness sees itself both restricted in legislation and trampled in practice. This collusion of legal and practical restrictions has been particularly evident when wars have raged near our borders in the past. But it can also be seen today, when Sweden takes part in international peacekeeping operations in wars and conflict zones around the world. The ever-closer international cooperation that Sweden has chosen to be a part of has had an impact on openness.

It is true that assiduous Swedish efforts have made other countries – as well as supranational and international organisations of which Sweden is a member or with which it collaborates – take steps towards increased openness. But this cooperation has also come at a cost, as our own regulatory system and its application have been chipped away at.

Before returning to the present, to PTS and the data retention directive, let us briefly revisit a few episodes in 200 years of forward strides and setbacks to openness.

1809: Revolutionary openness

As described in other contributions to this volume, the 1766 Freedom of the Press Act, which abolished pre-censorship and introduced the right to make public – or print – official documents, was short-lived. It was not until the revolution of 1809 that the right to reproduce official documents was restored to the Constitution. This was achieved by means of an enactment in Article 86 of the Instrument of Government. In addition to every ‘Swedish man’ being given the right to issue publications without any restrictions imposed beforehand by the state, it also lays down that:

All documents and records, of whatever purpose, with the exception of such records as are kept in the Council of State and with the King in ministerial matters and military decisions, shall unconditionally be allowed to be published in print.5
And when a new Freedom of the Press Act was passed in March 1810, the right to read, copy and reproduce official documents was lifted almost verbatim from the 1766 Freedom of the Press Act. The right also included what we today call the promptness requirement, which is that the documents must be provided ‘immediately and without delay’. The right to receive, on payment of a fee, duplicates of documents as ‘attested copies’ was also written into fundamental law.

Exceptions from the right to access official documents were specified in the same fundamental law. These exceptions would remain there until 1937, when a breakthrough on principle occurred with the provisions were written into a separate law. We shall return to this radical change.

The Riksdag’s own Ombudsman (Justitieombudsmannen, JO), instituted by the 1809 Riksdag as an extraordinary supervisory entity, was tasked with keeping a watchful eye on whether the authorities were living up to the spirit and letter of the law. JO took on this task with the utmost zeal. Since then, JO has had a considerable role to play in the establishment of practice regarding access to official documents – practice which has on many occasions been adopted by lawmakers and enshrined in law. As an example of this, JO’s demand that authorities keep registers of their documents was prompted by actual cases. Without such registers, access to official documents becomes largely an illusion.

At the beginning of the 19th century, JO’s method of putting right refractory authorities was to bring charges against individual officials. JO pursued a number of successful prosecutions for neglect of office. These included one against the President of Kungliga statskontoret, the department of state that administered state finances, which ‘like every other department of state’ was unconditionally obliged to record all matters, irrespective of their nature, in the form of lists, registers or journals.

Today’s JO retains the opportunity of prosecuting officials who have been in breach of regulations on the handling of official documents and the public’s right of access, but such legal action has been very rare in modern times. Instead JO uses notices and statements to try to correct wrongful conduct by the authorities.

**Expansion and transparency**

In the early part of the 20th century, state and municipal involvement in all areas of society expanded, or rather exploded. What had previously been taken care of by individual actors now became the concern of society as a whole and its institutions.
With the expansion of public services came demands that confidentiality regulations be revised. Proposals to the government for reviewing confidentiality legislation came from individual citizens, public authorities and JO as well as the Riksdag. A number of motions were submitted in the Riksdag. The proposals not only concerned the protection of information about individuals held by authorities; criticism was also levelled at unnecessarily long confidentiality terms.

The Riksdag's written communication to the Government on 11 June 1921 stipulated that as the state had taken over activities which had previously been 'more consigned to individual lives', repeated additions to the confidentiality provisions in the Freedom of the Press Act had become necessary. And more would no doubt become necessary.

The Riksdag also pinpointed an issue which has since been mulled over in report after report, namely the protection of the state's business activities. In the communication, it stated that it had been and would become necessary to apply confidentiality to these activities so that the state 'would not be forced into a disadvantageous position in relation to private business interests' by having to make public that which 'every private businessman is unconditionally entitled to maintain secret'.

The other reason for the expansion of confidentiality was the need to protect the interests of individuals. Information about someone who, for some reason, had found it 'necessary to turn to the state authorities for assistance' in purely personal matters must not be disclosed if it could harm or cause detriment to the individual. As examples of this, the letter mentioned doctors' statements prior to a couple's entry into or dissolution of marriage, and the care of alcoholics.

The confidentiality provisions in Article 2, Item 4 of the Freedom of the Press Act had, according to the Riksdag's communication to the Government in 1921 – which preceded The Herlitz Report – 'ballooned into an item that was very unwieldy in formal application'. This was a tendency the Riksdag feared would continue. It was therefore to be desired that a formal summary be made of the many 'rather diffusely distributed detail provisions', the letter continued. The Riksdag wanted the confidentiality provisions to be grouped together into one legislative locus, and for confidentiality terms to be reviewed at the same time. It also questioned the arrangement by which certain documents were classified in perpetuity, and could only be declassified by the Government.

The Riksdag also noted that during the war years, 1914–1918, classification of documents was carried out to 'a very considerable extent'. These were documents that concerned Sweden’s relations with other countries,
The Riksdag’s urging for a ‘prompt audit’ was accommodated by the Government’s appointment in December 1924 of Nils Herlitz, a specialist adviser at the Ministry of Justice, to review the confidentiality provisions.

**Herlitz’ first review**

The first proposal for the wording of Article 2 of the Freedom of the Press Act consisted of 50 items. The four first of these defined where the Principle of Public Access to Official Documents was to be applied and how. The three final items included specifications of sanctions for violations of the provisions, while the remaining 43 items dealt with exceptions from the primary rule on public access to official documents.

The first item stipulated that all documents not expressly subject to an exception under Section 2 must be disclosed, if they were kept at a ‘state authority’. State authorities included the Riksdag, general synods, courts, civil service departments and all other parts of state administration, such as working groups and committees.

It also stipulated that this applied to all documents, ‘of whatever type they be’, which had been ‘received’ by or ‘drawn up’ at an authority. Herlitz defined ‘official document’ as all documents held by an authority, regardless of whether they were classified or not.

Official and unclassified documents were to be disclosed ‘without delay’ if this could be reconciled with ‘other equally important official duties’. Disclosure was to be made by means of the authority making a duplicate of the document and handing over the copy. If the duplication could be carried out without ‘significant impediment’, no fee was to be charged. These ideas about when a fee was to be charged have been carried over to the currently-applicable regulation on fees, which stipulates that the first nine copies are to be free of charge.

In Item 2, Herlitz suggested that what applied for state authorities and bodies must also ‘apply for all municipal authorities’ documents’. The term ‘municipal authority’ referred to all municipal administrations, assemblies, boards, committees etc.

The two following items included several provisions which are still in force today. They stipulated, for instance, that it was the official to whom the
keeping of the document had been entrusted who was to assess any request for its disclosure. If no decision had been made at the authority as to who administered such matters, it fell to the authority to assess the request. These items also included provisions stipulating exceptions for such documents as had been submitted to an authority for keeping only.

In Nils Herlitz’s view, the expansion of the area of application of the Principle of Public Access to Official Documents made it necessary to introduce further confidentiality provisions into the fundamental law. In his report he further argued that the confidentiality rules ought to be lifted out of the fundamental law and instead be laid down in ordinary law. It was true, he wrote, that there were strong reasons for keeping the exceptions in a fundamental law. This made it more difficult to limit transparency, since restrictions required two Riksdag decisions with a general election between them. But the requirements for a change to a fundamental law also meant that it would be more difficult to abolish confidentiality provisions. The major danger or problem with confidentiality provisions at the constitutional level was, according to Herlitz, that they would be made broader and vaguer in order to cover confidentiality interests which were not apparent when the provision was introduced. He also pointed out that it was not possible to immediately protect the integrity interests of individuals when a new reform was introduced. Instead such interests had to wait until the constitutional procedure was complete. This could, Herlitz believed, inhibit or delay the introduction of urgent social reforms. But he had sensed which way the wind was blowing, and noted that ‘such a change is not likely to have the best prospects for gaining the government’s approval’. And sure enough, Herlitz’ ideas about grouping confidentiality provisions into a separate law were not taken up during the discussion in the Riksdag. Neither did the Riksdag adopt the idea that municipal documents be covered by the Principle of Public Access to Official Documents.

**Herlitz’ second time lucky**

By the time the Government appointed Nils Herlitz to review the regulations regarding official documents a second time, in 1933, the debate had shifted in his favour.

In his 1935 report he noted that a series of exceptions to openness had been introduced during the 20th century. They had been added in a somewhat ‘desultory’ fashion, as solutions to acute problems as these had arisen. They had been intended to protect not just the authorities’ activities, but also the integrity of individuals.
Herlitz argued in his report, as an ‘immediately apparent’ new feature, that confidentiality provisions should be placed in a separate law, and not at the constitutional level in the Freedom of the Press Act. He pointed out that this proposal had already been raised in the preceding review, but argued that the reasons for such an arrangement had grown stronger in view of the expansion of the authorities’ activities.

Spreading the provisions across different laws made it difficult for citizens to know the rules that applied. With integrated and concise legislation, Herlitz expected that any future extensions of confidentiality would be made in consideration of the principles on the public’s right to transparency.

Herlitz also revived his 1927 proposal that municipal documents be covered by the Principle of Public Access to Official Documents. He did not pursue any detailed argumentation regarding this in his second review, simply noting that the position of municipal documents had hardly been the object of any ‘difference of opinion’ after the Riksdag in 1925 had expressly required that they be included.

The third major change that Herlitz proposed was a reform of how the assessment of a request for access to documents was carried out. It was not justified, he held, that a person who had been refused access to a document should have to sue an individual official in court, via the Parliamentary Ombudsman. This was a lengthy process that many people were reluctant to embark on, and one which Herlitz regarded as too ‘unbending’ – too severe – against the individual official.

Herlitz believed that the time was ripe for introducing an administrative appeals body. With the institution of the Supreme Administrative Court, the conditions were in place for providing an ‘expert and impartial’ review of the refusal to disclose documents. The route to having a case examined by the highest instance should, Herlitz argued, be essentially the same as when other decisions by authorities were appealed.

The review also included a proposal for concrete provisions to be introduced in the ‘special law’, the Secrecy Act. 43 sections specified the types of information secrecy that should apply. Information handled at the Ministry for Foreign Affairs and which concerned ‘a foreign power or its circumstances’ could only be made public following Government approval. There were also a number of limitations intended to protect the privacy of individuals. Examples included notes in parish registers concerning ‘pastoral care’ or ‘church discipline’, or other information about individuals’ life circumstances. Such information could only be disclosed to the individual concerned, or to someone else if the individual concerned had consented to it. This requirement for consent applies, with a few exceptions, to this day.
Secrecy is given its own law

The Riksdags of 1936 and 1937 decided on number of changes to the rules and regulations governing openness. It was at this point that the term ‘official document’ was introduced. The Principle of Public Access to Official Documents was now also to apply to documents such as memoranda and reviews upon which the authorities base their decisions and measures.

From 1937 it became markedly easier to appeal an authority’s decision not to disclose an official document. Prior to the change in the law, a person who had been refused access to a document had to turn to the courts and bring an action against the individual official who had refused to disclose the document.

The change also meant that an authority’s decision could be appealed to a higher court. Today we know this institution as a ‘decision with an appeal instruction’. This means that the authority has to justify why a document is not being disclosed, as well as state the statutory provision this decision is based on and how the decision can be appealed.

It was proposed as early as in 1912 that municipal documents be made equivalent to state documents. But it was only 35 years later, after the two reviews by Herlitz, that the Committee on the Constitution considered the issue 'ripe for a solution'. The Committee observed that there was uncertainty about the status of municipal documents. Municipalities’ practices varied, and the courts had not provided any consistent guidance as to whether the documents were to be regarded as official (and therefore public) or not. In the Committee’s view, it was now time to put a stop to this.

The proposal received criticism from various quarters, including the City of Stockholm. According to the City Council, documents concerning the City’s finances and financial management should, in general, be excepted from transparency. The Committee on the Constitution responded that this would be ‘wrong in principle and in practice’, since oversight by the general public of the City’s financial management was of considerable value and would benefit the City in the long term. The Committee’s view was that the City’s objection was driven not by concern for the Principle of Public Access to Official Documents, but by a desire for secrecy. This, the Committee continued, made the objection ‘less worthy’ of consideration.

Instead of applying a blanket exception, it argued, the need for secrecy should be met by means of specific exceptions – just as was the case with respect to the state’s financial affairs.

The proposal that was most debated and questioned, however, was the one to lift out the specification of what documents, or types of information, were covered by secrecy from the fundamental law, and institute it
in ordinary law. The Committee on the Constitution found this justified, in part to prevent the Constitution from becoming weighed down by a multitude of detailed regulations. And without a separate law, frequent changes would need to be made to the Constitution in order to keep pace with developments in society.

One of the era’s foremost specialists on freedom of the press legislation, Hilding Eek, was sharply critical of the idea of removing secrecy regulations from the Constitution.

The result has … been that the Principle of Public Access to Official Documents no longer enjoys any real constitutional protection in our country. In this way, the legislation indicates a turning point in the history of Swedish press freedom.⁸

Eek noted that the proposal had caused little debate, and feared that the keen eye of the parliamentarians had been clouded by the Government’s profuse pontificating on the significance of the Principle of Public Access to Official Documents. Even if the minister had solemnly declared, in the Government Bill, the importance of this principle as an indispensable element of maintaining trust in the administration, this had not been translated into any ‘marked manifestation in the drafting of the new statutory rules’. Eek could not conceal his disappointment at the ‘scant interest’ shown by the Riksdag.

His view was that the Government had given more weight to practical reasons, ‘bureaucratic’ interest, than to the principles that underpinned the regulation. His critique could also be read as a direct polemic against the Parliamentary Ombudsman, who had emphasised the great ‘practical advantages’ of removing the secrecy regulations, and that the ‘reasons mainly in the nature of principle’ which were being cited against it should not ‘be accorded any decisive significance’. Hilding Eek stated that despite his objections, he would have found the removal acceptable if it had been accompanied by the introduction into the Freedom of the Press Act of specifications regarding what type of information would be possible to classify as secret under ordinary law.

In the proposed amendment of the Freedom of the Press Act presented by the Committee on the Constitution, documents could only be classified with regard to national security, the country’s relations with a foreign power, the combating and prevention of crime, the financial interests of the state or of an individual, and of the sanctity of private life. Eek’s view was that these categories were too general in nature, lacking precision. What the Committee on the Constitution did block, however, was the Government’s proposal for a general provision that it also be possible to classify documents for ‘other important reasons’; a provision that would have been
Openness and the freedom to communicate information

hard to outdo in terms of giving a free rein to arbitrary action and extemporary arrangements.

Since 1937 the Riksdag has added further areas in which confidentiality could be applied to the Freedom of the Press Act. These include the country’s monetary policy and the protection of animal species. Today the seven areas of interest in which confidentiality may be applied cover most of public life. The specifications of these areas are also so generally worded that it is possible to subsume just about any item of information at all. Hilding Eek was not happy then and would likely not have been happy today.

The change in 1937 that made it possible to introduce secrecy without a lengthy constitutional procedure should be seen in the light of the ominous clouds amassing over Europe. As the changes in the right to transparency were introduced, a series of other restrictions to press freedom were also made into law.

A legal mobilisation was beginning in Sweden. Provisions were put on a war footing. What had been laboriously carved out over decades, often following fierce battles, proved itself to be alarmingly evanescent.

World War II

On 12 November 1942, the Swedish Publicists’ Association (Publicistklubben) had arranged a debate featuring the Minister without Portfolio, Thorwald Bergquist. The evening’s theme was transparency at public authorities. Before the debate, a reporter from TT (Tidningarnas Telegrambyrå, the principal Swedish news agency) named Timus Fredric Winqvist had attempted to find out how many dossiers were classified at three ministries. He was informed that their number was also a secret.

During the debate, Winqvist explained that the press was not only denied access to what could be classified under the provisions of the new
Secrecy Act, but also to information that the authorities ‘considered’ to be confidential. The mentality at the civil service departments, Winqvist said, was that the press was a dangerous thing from which as much information as possible must be kept. He was seconded in this view by the director of TT, Gustaf Reuterswärd, who argued that the new Secrecy Act had created a jungle of regulations and an attitude at the authorities that had not existed before 1937.

Bergquist admitted that his opponents in the debate were partially right. The new Secrecy Act was certainly necessary, in the Minister’s view, but it ought perhaps to be said that the authorities ‘are beginning rather at their discretion to deny the public access to some documents’.

As so many times in the past, limitations to transparency were accompanied by restrictions on disclosing information.

One rule that caused a lot of irritation and secrecy-mongering was dubbed ‘the 197’. The promulgation that the Government adopted in April 1940 imposed a blanket ban on publishing information on everything from the strength of the armed forces to the national economy.

The National Board of Information (Statens informationsstyrelse, SIS.) was tasked with helping the press negotiate this minefield of an ordinance. SIS was also the authority that examined requests from the press for exceptions to the publishing ban.

The directions from SIS meant, among other things, that a newspaper could not report the story that the defence forces had shot down German planes violating Swedish airspace, even if a downing had been seen by local residents. At the Publicists’ Association, a colleague of Winqvist’s, Ewald Beckman, related how SIS with reference to the 197 had forbidden publication of the news that the Navy’s ice-breaker, Ymer, had run aground at Vaxholm outside Stockholm.

SIS played a very central role in efforts towards mental preparedness during the war. Under the Government’s instructions from 1940, SIS was to manage ‘requisite surveillance of all types of portrayals aimed at the general public’. The aim was to ‘prevent such portrayals as should not, in view of the political and military situation, reach the public, from doing so’. A special monitoring unit was set up at SIS and instructed to compile a daily press overview. Articles considered ‘noteworthy’ by SIS were passed on to the authorities concerned. The intention behind this, according to the head of SIS, Sven Tunberg, was for the authority subsequently to contact the newspaper in question to make sure that such missteps did not happen again. SIS was no paper tiger, limited to appealing and recommending, but had real power. Publications that were regarded as ‘harming the country’ were to be reported to the Minister for Justice for possible legal action or other measures.
SIS was also specified as the sender of the approximately 260 ‘grey slips’ that were distributed by TT to the press. These slips of paper, which could be blue, green or yellow as well as grey, contained exhortations about what the newspapers should publish, but offered even more detail as to what was inappropriate for the general public to learn.

SIS collaborated very closely with the Government. Contacts with the Foreign and Justice Ministries were frequent, but SIS also kept in touch with the armed forces and the security service. SIS can be likened to an information ministry or, in the officials’ own words, a ‘Government Press Office’. In addition to making recommendations, SIS also issued pre-written articles that it expected to be published. There are examples of officials at the Ministry for Foreign Affairs interviewing themselves and then writing articles which were subsequently distributed to newspapers via TT. As well as the now-familiar campaigns such as ‘En svensk tiger’ (‘A Swede keeps quiet/A Swedish tiger’) and ‘Fienden lägger pussel’ (‘The enemy is making a jigsaw puzzle’, suggesting ‘don’t let them have your piece’), SIS was also pursuing more shady activities such as information meetings and confidential contacts with individual editors.

Yet limitations to press freedom during the war went a lot further than control by slips of paper and curtailment of the Principle of Public Access to Official Documents.
Informal pressure and a revived legal corpse

Even before the war broke out in 1939, the Government began to appeal to the press to rein itself in. In a confidential letter to all the country’s editors-in-chief dated 7 October 1938, Prime Minister Per Albin Hansson and Foreign Minister Rickard Sandler urged maximum moderation so that ‘suspicions might not be directed against Sweden about taking sides for or against one or the other power or group of powers’. The right to free speech would naturally be preserved, according to the ministers, but ‘criticism can surely be practised with due consideration for your country’s interests and without exaggerations or intentionally hurtful turns of phrase’.

The letter, marked ‘confidential’, points out that foreign powers react to articles in the Swedish press by contacting the Foreign Ministry. The verbose letter ends by extending a ‘warm appeal’ to devote particular attention to reports from foreign correspondents, letters to the editor and ‘drawings, in particular caricatures, and when composing headlines for newspaper placards as well’.

In plain language, Hansson and Sandler were adapting for their purposes the former German ‘Iron Chancellor’ Bismarck’s thesis that ‘the state has to pay for the windows broken by the press’. This was the first divergence from the previous Foreign Minister, Östen Undén’s, principle that the Government could not be held responsible for what the press wrote. If anyone complains, Undén’s reasoning went, the answer should be that the Government neither has nor can take any responsibility for what is published.

The appropriateness of informally appealing to the press for restraint is questionable. But it is plainly inappropriate to do so publicly, since that sends the message that the Government both feels and assumes responsibility for what is published. After Germany’s attack on Poland, Prime Minister Per Albin Hansson made a public appeal for ‘self-discipline’.

It was only three months later that the tone was sharpened, with the Government undertaking the first measures that meant it was assuming indirect responsibility for what was published.

Public appeals have proven insufficient. With the high esteem in which it holds free speech, the Government would prefer not to make use of the avenues of reaction that confiscation and prosecution offer. But it has been necessary to take this route, too.

It was the Justice Minister and legal historian, K G Westman, who had encountered and revived a legal corpse in the Freedom of the Press Act. Under this provision, a publication could be confiscated without trial if a misunderstanding with a foreign power had arisen. The provision was
ENGL. UTRIKES
SPARTEMENTET

Stockholm den 7 oktober 1938.

Konfidentiellt.

Herr Chefredaktör,

Den yttre allvarliga kris, som Europa i dessa
dagar genomlevat, har för alla och en var klarlagt de ris-
ker, som de nuvarande storpolitiska motsättningarna kunna
medföra för världens fred och för de mindre staternas na-
tionella obesänkblad. En skiljsport omg svensk opinion har
kommit till uttryck, för att Sverige vid en stormaktkon-
flikt skall söka att i likhet med sina nordiska grunnar be-
vara sin neutralitet.

En viktig förutsättning för att en politik, som
syftar till neutralitetens upprätthållande vid en sådan
konflikt, skall kunna så friktionsfritt som möjligt genom-
föras, är, att pressen även under en period av relativ av-
spänning isatttagar en sådan hållning, att berättigade mis-
tänkta icke kunna riktas mot Sverige för parttagande för
eller mot den ena eller andra makten eller maktnsgruppen.
För fulföljandet av denna svenska politik synes det också
vara av stort värde, att den allmänna opinionen blir med-
veten därom, att med neutral hållning i en eventuell kon-
flikt bätt överensstämmer att visa återhållsamhet i anvis-
ingar, hur andra makter böra eller bort håndla. Sivetvis
innebär detta icke, att pressen skulle vara pliktigt avhålla

Chefredaktören S. Dehlgren,

[Signature]
sig från att upptaga förhållanden inom främmande maktar eller mellan dem till kritisk granskning. Rättigheten till kritik därav ingår givetvis som en integrerande del i den fria yttranderätt, som utgör ett väsentligt och dyrbart drag i en demokratisk stats väsen. Men en sådan kritik kan särskilt under vederbörligt hänsynstagande till det egna landets intressen och utan användande av överord eller avvikligt sårande uttrycksätt.

Vid åtskilliga tillfällen och senast i dessa dagar har haft främmande maktors härvarande representanter sida allvarliga förespråkningar gjortas hos utrikesledningen med hänsyn till i den svenska presens förkommende uttalanden, och dessutom har från visas svenska besökningsschefer i utlandet enträget hemställt, att den svenska presens uppmärksamhet måtte finnas vid faran av alltför passionerade eller överlagda uttalanden.

Från främmande makters sida följer av allt att döma den svenska presens, även mindre allmänt spridda pressorgan, uttalanden med den allra största noggrannhet. Överläggningar och presammanställningar insamlas och underställs respektive utrikes- eller statsledningar. Uttryck och vändningar, vilka i den inre diskussionen icke tillämpas större betydelse och därför stundom blivit vanemässiga, kunna i överläggning och måhända löstykta ur ett större sammanhang tilläggas en helt annan valör än den, som avsetta, och medföra konsekvenser, som icke kunna förutses.

Det må också tilläggas, att i flertalet andra län-
der med liknande inställning som vårt, pressen utan att på något sätt ge avsked på sin fria kritikrätt ålagt sig en sådan återsläppighet och försiktighet i ordvalet vid kommenterandet av utrikespolitiska företeelser eller förhållanden i andra länder, att den blivit en aktiv tillgång för vederbörande regering i dessa neutralitetspolitik.

Jämväli ett annat område av pressens verksamhet är i samband med den senaste krisens liksommar att beröras. Det är den omständigheten, att nödiga varnande i fråga om våra egna militära anstalter och dispositioner icks alltid inaktuellt. Från vår militära ledning har bekämpar framförts, vilka föranleda att understrykande av betydelse av att stor omsorg ägnas åt allt rapportage på detta område, varvid vikt avses bär läggas icke blott då i, att upplysningar icke kommer i obehöriga händer utan jämväli att allmänheten icke onödigt alarmeras.

Med enledning av vad vi sälanda framhållit riktas vi till Eder, Herr Chefredaktör, en världadj, att dessa synpunkter av Eder måtte beaktas och även bringas till Edra medarbetares kännedom.

Vi vilja säkert understyrka, att det avses oss, som om ifrågavarande synpunkter borde vara vägledande icke blott i fråga om redaktionella uttalanden utan även vid den från tidningens ledning nu mer än någonsin erforderliga granskringen av inflytande meddelanden från tidningens korrespondenter och insändare samt vid in-
förändret av teckningar, särskilt karikatyrer, och vid avfattningen av rubriker även för löpsedlar.

Denna skrivelse avgår samtidigt till så gott som samtliga chefredaktörer i landets tidningspress.

Med utmärkt någotkning

Statensminister.

Utrikesminister.

Photo: Emre Olgun.
regarded by constitutional specialists as a dead letter, which had existed in the Freedom of the Press Act for 100 years but had never been used.

Westman notes in his diary that with the help of this provision it is possible to get at the blusterers in the press as well as avoid relying on a jury, which is likely to be ignorant of foreign policy issues. The Government can thus be certain of success and evade the ignominy of a jury rejecting the Government’s prosecution.

The first publication to suffer confiscation without trial was Göring, Tysklands farligaste man (‘Goering, Germany’s most dangerous man’). It was written by a German journalist, Kurt Singer, who for a brief period was employed at Ture Nerman’s periodical Trots Allt! Shortly after this the book Hitler skjuts kl 24! (‘Hitler will be Shot at Midnight!’) met the same fate. According to Westman it was a ‘filthy book devoid of any trace of talent’.

The two confiscations became ‘trial balloons’ that managed to avoid pot shots from the press. K G Westman was more than pleased when he summed up his impressions in his diary following a debate at the Publicists’ Association: ‘no-one touched upon my confiscations; on the contrary, everyone seemed most kind’.

One of those who nevertheless did raise his voice against the confiscations was the writer Vilhelm Moberg. He described them as ‘clandestine hangings’ since those subjected to them were given no opportunity to defend themselves, nor even any information about why the measure had been taken.

Press Board, national welfare and censorship

Beyond curtailments on openness (for which the new Secrecy Act was a perfect fit), information control, appeals and confiscations, the Government took further steps to try to maintain a spiritual neutrality.

The Foreign Ministry hand-picked the cream of the country’s publicists to convene in a special Press Council. This Council, which in 1941 was transformed into the Press Board (Pressnämnden), became one of the country’s 35 central emergency bodies, which also included SIS.

The Government appointed Sten Dehlgren, publisher and Managing Director of Dagens Nyheter, as Chair of the Press Board. Among the other members were Harry Hjörne from Göteborgs Posten and Ivar Andersson from Svenska Dagbladet, as well as a representative of the Swedish Union of Journalists.

The Press Board issued direct or public warnings to colleagues who were regarded as using press freedom in the wrong way. These warnings were
not some form of pointer between colleagues, with the best intentions, but rather a sanction in the legal sense since they were issued by an authority.

Another intervention by the authorities contrary to the spirit of the Freedom of the Press Act was the Government’s imposition of transport bans on some newspapers. The Government considered itself at liberty to forbid the distribution by public means of any newspaper that had lost a press freedom case. Ture Nerman’s weekly *Trots Allt!* was banned from being carried on railways and buses. This was a stinging penalty, particularly as Nerman himself at the time was serving a prison sentence on Långholmen for having defamed Hitler. And even with the transport bans the Government stretched regulations, adding a ban on newspaper placards that could be seen in public places.

The slippery slope that began with appeals and grew steeper with administrative measures, the application of pressure and the extension of secrecy, can be said to have hit rock bottom with the decision to enable the introduction of censorship, or pre-publication scrutiny.

In June 1941, the Riksdag adopted a second decision, confirming the decision on constitutional change of the previous year, enabling the Riksdag to introduce, during war or when faced with the threat of war, pre-publication scrutiny of newspapers considered to pose a threat to the country.

The Government Bill underlying the censorship law emphasised the importance of a ‘sense of affinity’ and ‘community spirit’. It had to be possible to stop the distribution of information that would lead to ‘despondency and dejection’ among the population.

Press freedom was subordinated to national welfare such as the Government currently chose to define it. The press was regarded as part of the machinery of state with which to achieve Government goals. In its bill, the Government wrote that it expected loyalty from the press.

> The vast majority of the press represents a direction of opinion that coincides with that of the Government, and loyally collaborates with the nation’s leadership on that basis.\(^{11}\)

Solitary exceptions to this could not be ruled out, the Government believed. Those who acted disloyally could present a danger, and in the Government’s view there had to be an ‘effective’ way of intervening against those who were ‘guilty of abuse of press freedom’.

This view of press freedom as something good and beneficial as long as it was used in the right way harked back to Gustav III. In April 1774, when the King abolished the 1766 Freedom of the Press Act, he declared that ‘press freedom is not harmful in general; it is only dangerous through its abuse’.
In the Riksdag, Minister for Justice K G Westman expressed the Government’s view of the press.

In a democratically-governed country, the Government, the Parliament and the press share the same foundations – that the press, just like the Government and the Parliament, is a function of the people...

The censorship law caused debate at both its votes. One of its most persistent critics was the former Minister for Foreign Affairs, Östen Undén. He regarded the law as a dismantling of mental preparedness.

“We are glad to say we have confirmed the Swedish people’s unquestioning faith in victory everywhere.” “Whose victory?” “We can’t talk about that here in Sweden.”

During the Second World War, Norwegian cartoonist Ragnvald Blix used the pseudonym Stig Höök. The cartoon “Visit of the Danish Journalist” was published in Göteborgs handels- och sjöfartstidning.

The censorship law was never activated, but it hung over the press like the sword of Damocles. From a historical perspective, it is alarming that the Coalition Government could even contemplate installing state censors at newspapers that were considered unreliable. It is like being transported back to the era before 1766, when the censor determined what could be printed and what could not.
The cumulative effect of the Government’s appeals and measures was a far-reaching departure from the main direction of the development of the Freedom of the Press Act since 1766. The consequences of these restrictions can certainly be compared with what went on during the Gustavian autocracy.

To the restrictions on press freedom must be added secret coercive measures such as the opening of letters and wiretapping of telephones. These were very widely used and were also directed at the press and its representatives. The Security Service also kept extensive registers of Anglophiles and subscribers to periodicals including *Trots Allt!*

To go so far as to claim that the Freedom of the Press Act had been suspended, and censorship introduced, may well be formally incorrect but, in reality, this was the effect these measures had.

Hilding Eek expresses this in his thesis from 1942.

It is of course regarded as disloyal and – considering the increasingly Draconian government powers in terms of interventions against the press as well as individuals – also risky to disregard the Swedish Board of Information’s directives and wishes. And considering the far-reaching extent of these, it is not without some justification to claim that the Swedish press, already by dint of the secrecy and ‘information’ policy, has in fact been placed under a certain censorship.\(^\text{12}\)

Note that Eek added ‘a certain’ in the final sentence. This is a hint which indicates that he naturally realised that pre-publication scrutiny, or censorship, may not have been formally introduced, but certainly existed in reality. Not sufficiently legally clear to suit a stickler for the letter of the law, perhaps, but aptly phrased by a constitutional expert in describing reality.

**The 1949 Freedom of the Press Act**

With two decisions, taken in 1944 and 1945, the Riksdag formally abolished the censorship law. At the time of the second decision, the 1944 Commission of press freedom experts had begun their work on a thorough review and revision of the Freedom of the Press Act.

The Commission’s proposal\(^\text{13}\) gave us the 1949 Freedom of the Press Act, which in the main still applies today. The Bill, which was adopted almost without changes by the Riksdag, came into force on 1 January 1950 and was clearly a reckoning with the press freedom policies of the war years.

When it came to the right of public access to information about public affairs, the specialists chose not to propose that the confidentiality provisions should be returned to the Freedom of the Press Act. But with reference to the wording in the Instrument of Government which says that press
freedom is to have the status of a fundamental law, they rejected the suggestions, presented in some motions to the Riksdag, that further provisions should be shifted from the Freedom of the Press Act into ordinary law.

The Government shared the specialists’ view. In its Bill, it also concluded that it was not the right time to raise the issue of whether confidentiality provisions should be in ordinary law or fundamental law. This would delay and obstruct the changes to the Freedom of the Press Act which were urgent. The Government’s view was that a revision of the confidentiality provisions themselves, on the basis of experience of their application since 1937, should be shelved for the time being.

The pros and cons of placing the confidentiality provisions in ordinary or fundamental law have been discussed and explored on many occasions since then. No proposal for returning the confidentiality provisions to the Freedom of the Press Act has ever been put before the Riksdag.

Computerisation and potential documents

In 1969 the Government appointed a commission to review the Principle of Public Access to Official Documents. Named the Public Access and Secrecy Legislation Commission (Offentlighet- och sekretesslagstiftningskommittén, or OSK), its main task was to review the provisions regarding access to information at public authorities which is not available as hard copy (printed on paper).

It was true that it had become established practice, following examination by a court, that information stored electronically at authorities constituted documents as defined in the Freedom of the Press Act. According to the Public Access and Secrecy Legislation Commission, developments during the previous 15 years had meant that the term ‘document’ in the Freedom of the Press Act had been expanded to include e.g. ‘punch cards and punch tape’. The form of the holes and their position in relation to each other constitute an image that ‘would seem to be of such nature that it falls under the rules on documents’.

It was time, the Commission felt, to let established practice be expressed in a concrete and clear fashion in the Act’s second chapter.

There was a definite need for legislation in the opinion of the Public Access and Secrecy Legislation Commission, since the number of registers transferred to computers was increasing rapidly. The Commission’s survey showed that in 1971 there were as many as 339 computer systems (known as automatic data processing registers) in the public sector. Automatic data
processing was used for the population register and property register, for example.

In addition, there were opportunities to combine data from various registers and create new documents. It was also possible, according to the Public Access and Secrecy Legislation Commission, to ‘connect computers to each other using telecommunications and radio technology’. Their view was that this development was still in its earliest stages, and they foresaw that the processing of very large amounts of personal data by authorities could threaten privacy. The Commission regarded the authorities’ systems as already having a ‘considerable breadth as well as depth of information’.

With this report as a basis, Minister for Justice Lennart Geijer drafted a forward-looking bill. The proposal, which was adopted by the Riksdag, brought clarification of the status of electronic documents at government agencies.

The Minister noted that data processing occurred in ‘just about all branches of society’. The Bill stated that it can never be a question of allowing the public’s right to partake of information at an authority to “become dependent on the forms of information storage are used.” The Government did not want a separate regulation exclusively for data records; instead it chose to include ‘records for the purpose of automatic data processing or some other form of record which can only be read or heard using technical equipment’ in the Freedom of the Press Act.

This wording has remained since then, with minor modifications. It must be said that the Government was indeed forward-looking in not only mentioning automatic data processing, but also including ‘some other form of record’. This is an example of lawmakers’ ambition to find generic terms that include both familiar as well as future forms of technology. We have seen this more frequently in recent legislation on the areas of application of the Freedom of the Press Act.

According to this Bill it would also be possible for the general public to peruse automatic data processing records at authorities. The Government emphasised that the right to access official documents did not, however, oblige authorities to prepare or process information in their databases in response to an individual request. If an authority did carry out such processing, this was for service reasons and not due to any obligation under the Freedom of the Press Act. The previous procedure had not been satisfactory since it led to variable application and a risk of ‘arbitrariness’. In contrast with the Commission, the Government wanted to instruct authorities ‘in principle’ to use the computer programs they possessed in order to produce the documents whose disclosure had been requested. This right would not, however, include an obligation for authorities to produce
documents requiring the authority to acquire new computer programs or carry out advanced programming. That could, the Government felt, lead to unreasonable costs and ‘a significant workload’ which would adversely affect the authority’s normal operations.

In order to protect privacy, the Government proposed placing limits on access to electronic documents. While authorities did have to give the public access, via a computer screen, to information following a data run, the information could not be released in electronic form. And the right to access documents via a terminal need not be met if there were ‘significant impediments’, for example that the staff was busy with other important tasks. If the document was available in a readable format at another authority, and this did not imply a ‘considerable inconvenience’, the person requesting the document could be referred there. An example of a considerable inconvenience, according to the Government, was if an individual was referred to an authority in another municipality.

The Government also proposed the introduction of a ‘printout exception’. An authority should not be obliged to release information that was stored electronically in an electronic format, such as a memory. This exception was created out of a concern that individuals would comb the authorities for personal data in order to build their own databases, thereby threatening privacy.

In spite of the limits and restrictions imposed, the amendments in 1973 led to a strengthening of transparency.

The Commission continued its review of the Principle of Public Access to Official Documents and presented its final report in 1975. This report, too, led the Government to draft a Bill for amendments to the Freedom of the Press Act. Taken individually, these changes cannot be said to have been very sweeping, but their cumulative effect was to further strengthen transparency. No changes were proposed to ordinary law – instead the Government stated that it intended to come back with proposals in this area.

Beyond the many small changes, the great merit of the Bill lay in that it included a thorough and forward-looking discussion of how transparency was to be strengthened and applied. It is a Government Bill that in many respects must be regarded as still relevant and significant today – almost 40 years after it was first put before the Riksdag.

During the round of referrals, the Swedish Data Protection Authority, among others, warned that ongoing computerisation was threatening transparency in public affairs. The Government concurred. The Minister for Justice, Lennart Geijer, expressed apprehension that the ‘alienation’ that most people felt towards computer technology would reduce their in-
clination and opportunities of making use of the Principle of Public Access to Official Documents. Special measures were required, the Government felt, and there were compelling reasons for ‘taking a further step to explore whether computer technology can serve as a tool’ in increasing accessibility. It would raise the general level of knowledge, the Government’s reasoning went, and thus give the Principle of Public Access to Official Documents a further dimension, beyond the citizens’ right to monitor the work that authorities do.

One fundamental notion was that the authorities and the public should be on an equal level, in principle. If the authorities were able to produce an item of information, then it should also be possible to disclose it, provided it was not classified. This ‘principle of equality’ was included in the Government Bill, and continues to apply today, with the addition that authorities are not obliged to produce information they themselves are not entitled to handle.

### Municipal enterprises and transparency

In the 1970s and 1980s an entrepreneurial mindset began to spread throughout the country’s municipalities and county councils. Their activities were to be made more efficient, for the benefit of taxpayers. In place of municipal public utilities, or works (*verk*), municipal limited-liability companies sprung up like mushrooms. From one day to the next, electricity works, sewage treatment works and property management activities disappeared from public scrutiny. And at the same time as the public’s right of access vanished, so did employees’ whistleblower protection.

It is true that in 1992, rules on transparency in municipal enterprises were added to the Local Government Act. But the provision was regarded as temporary arrangement, and was not much of a commitment as municipalities were only to use the regulation on access to official documents as a ‘model’ in their enterprises.

The Committee on the Constitution stated in its opinion on this bill that the case for transparency in municipal activities was equally strong regardless of the form or forms in which the municipality chooses to organise its operations.

Based on the Local Democracy Commission report\(^{18}\), the Bildt Government laid a proposal before the Riksdag in October 1993. Under this proposal, municipal enterprises, foundations, trading companies and cooperative societies must, subject to certain conditions, apply the Principle of Public Access to Official Documents to its full extent. The conditions in-
cluded that the municipality or county council itself, or jointly with other municipalities, have legal control of the activity. This requirement would be met if the municipality appointed more than half of the board members or controlled more than half of the share capital in these enterprises.

The Commission’s proposal was not warmly received by the municipalities. During the referral period, the Swedish Association of Local Authorities was among several respondents who stated that the transparency regulation in the Local Government Act was sufficient. Umeå Municipality felt that extending the area of application only to wholly-owned enterprises was sufficient and not to where any private stakeholder was part owner.

The Government stood its ground. In the bill, the Minister responsible (Public Administration), Inger Davidsson, wrote that increasing numbers of previously entirely municipal activities had now been shifted into enterprises. This shift had occurred particularly in the case of activities that included commercial elements and where the enterprise was active in a market and was subject to competition. The Minister for Public Administration argued that the shift to enterprises had become so extensive that it was time for regulation – and that the same openness that applies to a public authority must apply to these enterprises.

The Government’s view was:

the legal opportunities for transparency and oversight should not be dependent on the form in which municipalities and county councils choose to carry out their operations.19

In order to block loopholes, the Government also included activities that municipalities and county councils ran as subsidiary companies of other enterprises.

With recourse only to the Local Government Act, a person who had been denied access to a document at a municipal limited-liability company could not appeal the decision. No legal remedy existed to have the matter tried. This was also corrected by making the rules for municipal enterprises identical to those for public authorities.

The Government’s position was that freedom to communicate information (whistleblowing) was one of the most important elements of freedom of expression. It would take ten years of uncertainty and judicial reviews before the right to communicate information at last came to include municipal enterprises as well, beginning on 1 July 2006. The amendment was made by inserting a provision into the Secrecy Act stating that municipal enterprises constitute public bodies. Employees were thus given the right to communicate information, and the enterprises forbidden from actively ‘sending in the plumbers’ to try to find out who leaked the information.
When the Secrecy Act was replaced in mid-2009 by the Public Access to Information and Secrecy Act (Offentlighets- och sekretesslagen), these provisions were transferred to it without any material alterations.

It has not been entirely easy to get municipal enterprises to live up to the Principle of Public Access to Official Documents. The business mindset and the profit motive are strongly entrenched.

Sometimes they are so strongly entrenched that the ownership structure of a company is changed in order to avoid transparency. In a letter to the owners of the company that was to arrange the Nordic World Ski Championships in Falun, the CEO was unusually frank. He announced that he had grown tired of explaining the business to outsiders and of constantly having to examine requests for access to the company’s documents. He therefore demanded that the politicians alter the ownership structure in such a way that the Principle of Public Access to Official Documents would cease to apply, or else that the municipality pay for a person whose sole task would be to deal with requests for access to information. ‘We have to have peace and quiet so that we can work’, the CEO declared, and was accommodated. By giving the Organisation Svenska skidspelen (Svenska skidspelen) a 10 per cent ownership stake, the municipality’s majority ownership ceased – and with it the right to public access to information.

In the same manner as in the 1980s, the area of application of the Principle of Public Access to Official Documents has been circumscribed, undermining its overall significance. The very considerable extent of outsourcing to enterprises so far this century has meant that hundreds of billions of kronor (SEK) in tax revenue are paid every year to private legal entities with no transparency. At the same time, hundreds of thousands of employees have lost their whistleblower protection.

There is reason to recall the view of both the Bildt Government and the Committee on the Constitution that irrespective of organisational form, the case for transparency is strong when it comes to the management and use of shared resources. Indeed, a new ‘restoration’ like the one in 1995 has been proposed for some of the outsourced operations, but at the time of writing the Riksdag had not come to a decision on this.

International cooperation and openness

The right of access to information about public affairs has taken a few knocks since 1766, even ceasing to exist completely during certain periods. Still, it may well be that the ongoing internationalisation is the biggest challenge to the Principle of Public Access to Official Documents since WWII.
Secrecy on issues that concern Sweden’s international relations has always been strong. The Ministry for Foreign Affairs has always wanted, and still wants today, the final word on disclosing documents that may be sensitive and may disrupt relations with other countries or international organisations.

There is of course good reason to maintain consistency in the assessment of disclosure of information, so that authorities make similar judgements and do not pursue their own ‘foreign policy’. The price of this consistency is long processing times. Instead of allocating resources so that it might meet the requirement for promptness in the Freedom of the Press Act, the Ministry for Foreign Affairs has referred to the circumstance that secrecy assessments have become increasingly complex and that registration systems continue to malfunction, year after year. Both the Parliamentary Ombudsman and the Committee on the Constitution have repeatedly criticised the Ministry for not taking its long processing times seriously enough, and for not living up to the constitutional requirement for promptness.

With increasing frequency, Swedish authorities are forced to perform a sensitive balancing act. The aim is to manage to both have their cake and eat it – to participate in cooperation without forgoing fundamental principles of national law. This is a balancing act for which the Government, as Sweden was preparing to join the EU in 1995, charted a clear course and sent a clear signal to the member states, EU institutions and Swedish authorities – and with the full support of the opposition.

The Principle of Public Access to Official Documents and the constitutional protection of the right to communicate information are and will remain fundamental principles that constitute an integral part of Sweden’s constitutional, political and cultural heritage.20

The Riksdag’s Committee on the Constitution has made a compilation of the changes made to secrecy provisions from Sweden’s entry into the EU in 1995 until 2012.21 In total during this period there were 65 substantial changes to the Public Access to Information and Secrecy Act as a direct consequence of EU regulations and directives. To this should be added a number of changes that were made just before entry in order to harmonise, to some extent, Swedish openness with the rules of the other EU countries.

While secrecy provisions have been added or made more stringent, it must also be said that Sweden has contributed to increasing the transparency of the EU institutions. The evaluation of Sweden’s Presidency in 2000 notes that the Government stood fast by and did not forgo the Principle of Public Access to Official Documents, and also managed to have rules
introduced for the EU institutions which have served to increase transparency.

But that was then.

Since then, the Principle of Public Access to Official Documents has taken some serious knocks in its confrontations with the British-Continental principle of administration, in which everything which is not expressly accessible to the public is classified. Between 2009 and 2012, 20 of 53 increases or extensions of Swedish secrecy regulations were a direct consequence of its EU membership.

The Committee on the Constitution has criticised the Government for simply forgetting about the Principle of Public Access to Official Documents when it negotiates with the other EU countries. It often happens, the Committee writes, ‘that issues of substance and fact dominate and that constitutional issues are neglected’.

In terms of foreign secrecy, a ‘straight requirement of damage’ applies today. This means that in its assessment of whether an item of information can be disclosed or not, the Ministry for Foreign Affairs must determine whether such disclosure could disrupt or damage Sweden’s foreign relations. On 1 January 2014, an additional level of foreign secrecy was introduced. Under Ch 15, Section 1a of Public Access to Information and Secrecy Act, information may be protected by secrecy if making it public could impair Sweden’s possibilities to participate in cooperation.

To this new provision should be added a further number of decisions in which Sweden has bent the regulatory framework underlying the Principle of Public Access to Official Documents. This applies e.g. to the principle that it is the authority that holds a given document which is to assess the request for disclosure. While it is true that consultations are sometimes required with the Ministry for Foreign Affairs, for example, it has never previously been the case that the assessment has been left to foreign authorities. Not formally, at any rate.

However, a settlement within the EU that the Government accepted renounced this principle. This agreement meant that the information involved could only be disclosed if the European Commission consented to it.

The agreement drew criticism from the Riksdag Committee on the Constitution. The Committee pointed out that it also violates the freedom to communicate information. This deviation was not a solitary mistake, or the result of a temporary lapse in vigilance. In a bill the Government notes that Sweden does not always gain a hearing for the position that a right to veto going public should not be included in the agreements. But if the international agreements are judged to be important for Sweden, the
Government chooses to accept even mutual agreements on secrecy or veto rights for the party that drew up the document.\textsuperscript{23} The 1995 declaration does not seem to have lodged in the authorities’ and the politicians’ memories. It therefore seems justified to repeat that the Principle of Public Access to Official Documents and the freedom to communicate information ‘are and will remain fundamental principles that constitute an integral part of Sweden’s constitutional, political and cultural heritage’.\textsuperscript{24}

The 1993 description reflects the significance that the legislator attaches to the right to release information for public disclosure.

The notion of protection in order to ensure that information reaches the public eye goes back to the 1766 Freedom of the Press Act. It says that the printer may not state the author’s name if he or she chooses to be anonymous. The author also has the right to publish his or her writings under a pseudonym, in order to avoid criticism or trouble. A printer who reveals the author’s name without consent may be punished by a 200 riksdaler fine. The only thing that can release a printer from this confidentiality under the 1766 Freedom of the Press Act is if a court orders the printer to reveal who the writer is. In cases where the publication contains something which is criminal and the author is unknown, the responsibility falls on the printer, who may be held criminally liable for the publication’s contents.

No more than eight years after the introduction of the Freedom of the Press Act, the liability rules were changed. Greater responsibility was placed on the printer, and in some cases both the printer and the author could be held liable for an individual publication. From 1792, the rule was that the author’s name must always be stated in the publication.

Following the changes to the Freedom of the Press Act in 1809, it was once again possible for the author of a publication to remain anonymous. But at the same time, the author must provide a ‘name bill’ for the printer. Should the printer refuse to show the name bill in order to protect the author, or not have any name bill to show in the event of a trial, the printer alone had to assume liability for what had been published.
In the name bill system we can make out the contours of the current rules on sole responsibility and the liability chains in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. Sole responsibility means that only one person can be held legally liable for a publication. In other words, it is not possible for the Chancellor of Justice to prosecute both the author and the publisher in a press freedom case. For non-periodical publications such as books, liability lies primarily with the author. If he or she is not named or stays away in the event of a trial, the liability shifts to the publisher, the printer and in some cases the distributor, in that order.

The right to anonymity was further strengthened in the 1810 Freedom of the Press Act, including by means of a proscription on asking for the name of the author at a trial, if the crime was deemed to be minor.

The right of anonymity for authors and informants was described, in a 1912 inquiry report on the Freedom of the Press Act, as one of the most important elements of press freedom. The right to remain anonymous was held up as a necessity in order that society’s ‘self-examination’ not be hampered by *esprit de corps*, family ties or fear of bosses. A false *esprit de corps* and a false sense of solidarity were described as ‘factors that are harmful to society’.

With respect to the daily press, or periodicals, the 1912 inquiry further observed that ‘the uniform warmth with which this right is cherished in the periodic press is … a powerful testament’ to the significance of the right to anonymity.

The liability chain that has gradually been developed since 1812, which was when the term ‘periodicals’ was introduced, currently means that the publisher, owner, printer and distributor may be held liable, in that order. Just as for non-periodical publications, only one link in the chain can be held liable and prosecuted for the acts listed as crimes in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

The carefully-specified liability chains mean that an action for crimes against press freedom or freedom of expression can never be brought against an informant, writer, photographer or others who participate in the production of a publication. This is a cornerstone of the freedom to communicate information.

According to the press freedom specialists of 1944, the need for protecting the right to anonymity was equally important for the press as it was for an author. Still, despite this and despite the inquiry observing that there was no case law for guaranteeing informants’ right to be anonymous, it did not propose the introduction of a provision in the Freedom of the Press
Openness and the freedom to communicate information

Act. The inquiry considered sole responsibility sufficient in itself, and that informants were a matter that the press had to take responsibility for.

The absence of a sharp proposal made many of the referral bodies hit the ceiling. The Swedish Association of Newspaper Publishers (Svenska Tidningsutgivareföreningen) declared that it knew of cases in which publishers had been pressured to provide the name of informants. In order for publishers not to be put in ‘situations of coercion’, a statutory regulation of the right to anonymity was necessary which would thus promote ‘opportunities for the press to obtain information’.

Similar reactions came from the Swedish Association of Journalists (Svenska Journalistföreningen) and the Publicists’ Association. The former’s view was that the inquiry’s proposal was ‘insufficient’ and that the rights of individuals must not be ‘made dependent on what newspapers deemed fit’. The Publicists’ Association feared that the pressure publishers would face to reveal a source could become ‘onerous’, particularly for smaller newspapers.

The Government heeded the criticism.

The text regulating the freedom to communicate information that the Riksdag adopted, and which came into force on 1 January 1950, gave every person the right to communicate information, on any subject whatsoever, for publication in media covered by the Freedom of the Press Act. Anyone who, against the wishes of the informant, named or in some other way provided information which identified an informant or an author, could be sentenced to fines or, if there were aggravating circumstances, to prison.

Since 1950, a large number of changes have been made to the fundamental principles of the freedom to communicate information and to the regulation of informants’ protection. One example of this is that the Government, in 1956, proposed adding further categories of agents that an informant could turn to with constitutional protection. The proposal, which became law, made protection of informants the same whether they were communicating information to a news agency, directly to a writer, a publisher or to the editorial staff of a publication.

The introduction of the 1965 Penal Code led to a weakening of this protection. A provision was added to Ch 7, Article 3 of the Freedom of the Press Act, where exceptions to the protection of informants were specified, stating that a person who violates the Penal Code’s provisions on espionage and other crimes against national security may be prosecuted. The justification for the change cited by the Penal Law Commission (Straffrättskommittén) was that national security could be jeopardised if sensitive information were leaked. The Committee’s view was that it could not be regarded as ‘satisfactory’ that ‘liability [was] exclusively’ attributed to
the legally responsible publisher. This provision compromised the concept of sole responsibility.

It was on the strength of this amendment that journalists Peter Bratt and Jan Guillou and their source, the IB employee Håkan Isacsson, were prosecuted and sentenced to prison for espionage in 1974. Their sentencing led to a change to the Freedom of the Press Act in 1978. One important measure for restoring the freedom to communicate information was the introduction of the freedom to procure information. Under the amended provision, the act of procuring information to publish could never be made punishable, and the protection of informants ensued regardless of whether their information was made public or not. However, if someone committed a crime in order to obtain the information, that person could be prosecuted for the crime committed. This applied e.g. to burglary, illegal data access and secret room surveillance.

At the same time, an express proscription was introduced for authorities and other public entities to investigate who had written in a publication or provided information which had been published or was intended to be published in a medium covered by the Freedom of the Press Act.

The proscription on hunting down leaks was supplemented with a far-reaching duty of confidentiality obligation by the person receiving the information. A direct connection was also introduced between the investigation proscription and the secrecy obligation in that even if an investigation were to be allowed, courts and other institutions still had to respect the secrecy obligation. This meant that those who knew who had provided the information could refuse to answer questions even if a crime triggering an exception to the protection of informants had been committed.

The prohibition on indicting a source for a crime against press freedom, the investigation proscription and the secrecy obligation were supplemented in 2011 by an express ban on all forms of reprisal against informants. More far-reaching measures such as sacking, notice of termination of employment or of disciplinary measures were made punishable.

The freedom to communicate information has not only been strengthened, but also broadened in that further categories of recipients were added. The ‘stencil rule’, introduced at the end of the 1970s, meant that a person providing information for a stencilled/photocopied publication with an imprint or a publication certificate was under the same protection as informants to established media. The 1992 Fundamental Law on Freedom of Expression also added websites linked to established media, and since 2005 protection also covers those who provide information to websites with publication certificates.
The present and the future

The development of the Principle of Public Access to Official Documents, and of legislation on freedom of expression as a whole, is characterised by a constant tug-of-war between different interests. Periodically the Principle has lost ground, only to come back with renewed vigour – as in 1809 and 1949.

At other times it has stood its ground relatively easily, protected from politicians and defended by the media.

Today the Freedom of the Press Act and the Fundamental Law on Freedom of Expression are subject to strain due to Sweden’s international involvements and ever-closer cooperation with other countries in, for example, combating terrorism. The fight against terrorism has led to the collapse of curbs on rights infringements even in robust democracies like the United States.

In Sweden, international cooperation has curtailed the Principle of Public Access to Official Documents, and the freedom to communicate information has also lost some of its strength and reach. The Freedom of Expression Commission’s proposal for expressly weakening the protection of informants to foreign correspondents in Sweden was approved by the Riksdag in 2014.26

Of all the proposals made by the Freedom of Expression Commission, the Government chose to move forward only on those which implied restrictions to freedom of expression. Proposals intended to strengthen freedom of expression, such as for the expansion of the distribution obligation, were put aside.

But that is not enough, according to the Government. More or less immediately after the Freedom of Expression Commission had presented its report, the Government appointed a Media Fundamental Law Commission (Mediegrundlagskommittén).27 The task of this new Commission is to propose changes which will allow Sweden, to a greater extent than is possible today, to assist other countries in legal investigations that impinge upon the regulations in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. This might include the possibility of carrying out questioning or confiscations which are not possible today.

To this are to be added measures for reinforcing privacy, where the trade-off with freedom of expression is sometimes made too lightly.

Taken one by one, these proposals may seem small and insignificant, and even justified in some cases. But there is reason, on the occasion of celebrating 250 years of what has been likened to the jewel in a free country’s crown, that small and incremental changes add up to major consequences.
Changes to the regulations can be seen clearly enough, but their consequences can be more difficult to foresee. And it is harder still to protect the Principle of Public Access to Official Documents and the freedom of communicating information from internal erosion by authorities where no-one has read their Herman Ludvig Rydin and understood the value of these rights for democracy.

Which brings us back to the EU Data Retention Directive and the Swedish Post and Telecom Authority (PTS).

PTS refused to disclose its legal report on the EU Directive’s compatibility with the European Convention on the grounds that it was not official. It was classed as an internal memorandum, which had not been processed for filing since it had not added any factual information to an individual matter at the authority. Neither had it been officially expedited since it had not been dispatched to anyone outside the authority.

Since the legal report was not an official document according to PTS, no assessment of whether its disclosure could cause damage or detriment was to be carried out. The document simply did not formally exist at the authority, according to PTS.

In my capacity as representative of Bahnhof, a telecoms operator, I requested that the Administrative Court of Appeal examine the status of the legal report. There were good grounds for considering the document to have been the basis for action by the authority, and that transparency demands that the public is able to follow and understand why an authority flip-flops. Transparency is also a matter of legal certainty for those who are subject to the authority’s supervision.

The Administrative Court of Appeal found that while the legal report was not officially expedited, and did not constitute a memorandum belonging to a specific matter either, it was nonetheless dated and ‘came to form the basis of PTS’ information on its website and for the Director-General’s statements – or, in other words, the official position of the authority immediately after the EU judgment’.

The Administrative Court of Appeal therefore considered that the report constituted an official document. The Court referred to the provision in the Freedom of the Press Act that even a document which has not been expedited or filed may be considered ‘concluded by other means’. The Court thus used the provision intended to capture documents that do not fulfil any of the other criteria in the fundamental law.

The letter to the Riksdag’s Committee on the Constitution that accounted for parts of the legal report was not registered at PTS. Instead the document was kept at the PTS legal secretariat. This circumstance not only made it particularly difficult for PTS’ own Registrar to trace, but all
but impossible for the general public to find. This procedure does not constitute any formal malfeasance, but its upshot is that the Principle of Public Access to Official Documents was, to all intents and purposes, dodged.

Herman Ludvig Rydin.
Notes

3 Judgment by the European Court of Justice in cases C-293/12 and C-594/12.
4 PTS, memorandum: Konsekvenser av att EU-domstolen ogiltigförklarat trafikdatalagrings- direktivet, 2014-04-10 (Consequences of the declaration by the European Court of Justice that the Data Retention Directive is invalid, 10 Apr 2014).
5 Minutes from the economic governance of the realm and other documents which ought to be kept secret were excepted.
6 SOU 1927:2, Utredning med förslag till ändrade bestämmelser rörande allmänna handlingars offentliggörande (Inquiry with a proposal for changed regulations regarding the preparation of official documents for public access).
7 The Committee on the Constitution report 37, 1936.
9 From a copy of the letter in the author’s possession.
11 Govt Bill 1940:269, p. 16.
14 SOU 1972:47, Data och integritet (Data and integrity).
17 Govt Bill 1975/76:160.
18 SOU 1992:134, Handlingsoffentlighet hos kommunala bolag (Public access to documents at municipal enterprises).
20 The declaration was delivered in 1995 and a counter-declaration received in return, which stated that Sweden was expected to follow decisions in the EU.
24 This declaration was delivered in 1995 and a counter-declaration received in return, which stated that Sweden was expected to follow decisions in the EU.
25 Govt Bill 1993/94:48, p. 35.
The responsible publisher

The unique Swedish model of sole responsibility

Pär-Arne Jigenius

The Freedom of the Press Act (Tryckfrihetsförordningen in Swedish). Taste the expression – a mouthful in either language. For Swedes, particularly journalists and lawyers, it stands for press freedom, freedom of expression and – not least importantly – for the right of access to authorities’ documents, courtesy of the Principle of Public Access to Official Documents (offentlighetsprincipen in Swedish). This is what we know the Freedom of the Press Act means in practice.

In my capacity as Press Ombudsman (Allmänhetens pressombudsman), I have often given lectures in English about the ethics of Swedish newspapers, and happily used the official translation of Tryckfrihetsförordningen, which is the Freedom of the Press Act – despite the fact the word ‘press’ is nowhere to be found in the text of the Act.

If we were instead to translate this Swedish term in the spirit of literalness used by the Bible Commission (responsible for Swedish Bible translations), well, we would probably end up with ‘the Freedom of Printing Act’. The Freedom of the Press Act is a technology-oriented fundamental law that regulates what, at the time of its institution, was the only form of mass communication: printing. The literal translation of the term brings to mind a guild ordinance, a trade regulation of the activities of printing companies. During the latter part of the 18th century, the modest volume of newspaper printing that went on was largely a side business for book printers.
When the Freedom of the Press Act came into existence 250 years ago, there was hardly a newspaper press in Sweden. The act concerned the right and the freedom to use printing presses for periodical publications, treatises and pamphlets. The newspaper press grew during the 19th century and assumed considerable significance for news conveyance and opinion forming in the country. The Freedom of the Press Act now became a fundamental law, if not in name then in actual fact, for the protection of newspapers’ activities.

‘The Freedom of Printing Act’ could now properly be designated ‘the Freedom of the Press Act’. But the fact remains that it is a fundamental law in which the words ‘press’, ‘editor’ or ‘journalist’ are not mentioned.

The printer’s art spread quickly in Europe during the mid-1400s. Image from Samuel Ampzing’s book from 1628. The National Library of Sweden.
So far, the will to preserve the Freedom of the Press Act has been very strong. Mass communication in other forms, using other technologies, is regulated in the Fundamental Law on Freedom of Expression, (Yttrandefrihetsgrundlagen). But despite this, developments appear to indicate technology-neutral solutions. The Swedish press has so far rejected all proposals to replace the Freedom of the Press Act and the Fundamental Law on Freedom of Expression with a technology-neutral fundamental law on freedom of expression. It is worth noting that, at the same time, the press is trying to find ways towards a shared, technology-neutral self-regulation of ethics. Instead of, as is the case today, a Press Ombudsman who is primarily concerned with printed publications, the idea is to institute a Media Ombudsman who assesses print, TV and publication via the Internet. Regardless of whether it is a matter of printed paper or TV or radio, regardless of whether it is public service or commercial media, the idea is for the same ethics body to receive complaints from the public and assess editorial work. Another sign of the times is that the TV licence is likely to become technology neutral, which is to say that the licence will have to be paid regardless of which technology used to access programmes.

Today, the same media company works with print, radio and TV. Indeed, over the course of a working day, an individual journalist could be dealing with media based on different technologies, and be working under the protection of different fundamental laws on freedom of expression. Today’s responsible publisher is anything but technology neutral; he or she crosses various media technology boundaries on a daily basis, applying different fundamental laws.

Within the political debate, calls have been made for a modernisation of press subsidies. It is possible that future subsidies will not go to printed media but to the production of quality journalism, regardless of whether this journalism is distributed in the form of a printed paper, online, or in other ways as yet unknown. The media landscape is changing rapidly and the position of daily print media as well as the general preconditions for journalism will certainly change. Many factors suggest that tomorrow’s press subsidies will be technology neutral, and more a form of journalistic subsidy.

My view is that one conclusion is unavoidable: media development strongly indicates that Sweden will also adopt a technology-neutral, comprehensive fundamental law on freedom of expression.

Finland was part of the Kingdom of Sweden until 1809. And a Riksdag member from the eastern half of the kingdom – Rector Anders Chydenius from Gamlakarleby – was one of the initiators of Sweden’s unique Freedom of the Press Act. While Finland and Sweden thus share the roots of
their press freedom legislation, Finland has chosen in the modern era to pursue a different model.

The Finnish Constitution is from 2000, and one section deals with the protection of freedom of expression and the right of access to information. Finland thus has the ‘normal’ model of legislation, internationally speaking, with a general protection of the freedom of expression in the Constitution and all detailed regulation in general law. The Swedish solution is technology-specific: printed publications in the Freedom of the Press Act and all other technologies in the Fundamental Law on Freedom of Expression. Finland chose a technology-independent wording for its Constitution: protection applies to all technologies and methods of publication.

From the Swedish point of view, it is interesting to note that the relatively recent Finnish Constitution gives the courts the specific task of determining whether general legislation is compatible with the Constitution. In a system where freedom of the press and of expression is guaranteed in a section of the Constitution, it is important for the courts to have this independent position when they are going to determine the limits of press freedom in the individual cases.¹

Finland no longer has sole responsibility like the Swedish model. The author and the editor may be held liable. However, the person who decided on publication holds special responsibility. These rules regarding the special position of the editor-in-chief are intended to prevent liability being imposed on several employees at a media company, all of whom have been involved in different ways, with the production of the offending article.

Sweden will probably follow the Finnish example in the foreseeable future, and introduce technology-neutral constitutional protection of freedom of expression. This gives us even more reason in 2016 to celebrate the fact that the principles of the Swedish Freedom of the Press Act have been preserved for 250 years. The Freedom of the Press Act was introduced around 150 years before the full establishment of democracy – and it has lasted for a century of democratic transformations of society. That is truly an example of far-sighted and broad-minded legislation.

The turbulent early years of the daily press

During the 18th century, newspaper publishing was mainly a side business for book printers – a way of making use of printing capacity. In the 19th century, newspaper circulation literally exploded, and newspapers acquired their own printing presses – newspapers even had buildings especially built for newspaper production. The extant building belonging to
Göteborgs handels- och sjöfartstidning was one of the earliest examples of this. However the establishment of daily newspapers as mass media was a turbulent affair.

In the Freedom of the Press Act of 1812, the Chancellor had been empowered to stop publication of a paper or a periodical that could be deemed ‘perilous to general safety or without reason and proof affronting [of] private rights or of a nevertheless defamatory characteristic’.

The Crown Prince, later to become King Karl XIV Johan, fought the emerging liberal press in Sweden during the 1820s and 30s by making frequent use of the power to suspend publication. Some financially-weak newspapers found themselves forced to close down due to these suspensions.

The biggest and financially most successful paper, Aftonbladet in Stockholm, was well prepared to withstand the Chancellor’s attacks, which took the form of a suspended publishing certificate as well as a press freedom indictment against the publisher. Lars Johan Hierta had started Aftonbladet in 1830, and the newspaper had quickly achieved what could be considered considerable circulation for the time, as well as an unusually broad and comprehensive content.

Hierta had studied the Chancellor’s actions against other papers – for example, Göteborgs handels- och sjöfartstidning had been forced to publish under names such as Götha Runor and Sjömannasällskapets Calender. When, in 1835, Lars Johan Hierta received a letter from the Chancellor about suspension of publication, he had prepared by ‘keeping a whole flock of permission certificates at the ready, with a responsible publisher for each one, as the publisher whose paper was suspended thereby lost his right to publish one’.

The newspaper publishers, led by Lars Johan Hierta, used a system of fronts, or straw men. But unlike today’s shell corporation supremoes who use social misfits as straw men, Hierta used a socially-responsible approach. The name of the newspaper included a number, so that The Sixth Aftonbladet was followed by The Seventh Aftonbladet, and so on. The publisher might be a clerk or typographer at the newspaper. These temporary publishers were nicknamed ansvaringar (‘responsibles’, from ansvarig utgivare, or ‘responsible publisher’). Hierta drew up contracts with each of them and provided for the front publisher’s family if he were to be caught up in the Chancellor’s toils.

The King’s fruitless attempts to control the press by suspending publishing certificates had, in practice, ceased by the end of the 1830s, and a few years later the power to suspend was abolished. Nowadays it is not consist-
ent with the Freedom of the Press Act to appoint a responsible publisher, i.e. a person who in reality has no influence over the newspaper’s content.

Newspapers become companies and journalism a livelihood

Earlier, newspaper publishing had been a side-line for book printers and devoted editors who usually earned their livings from something else. During the second half of the 19th century, many newspapers became established as companies, with permanently-employed staff, and journalism became a livelihood – albeit an insecure job of little social standing. Many newspaper companies tried to use the extra capacity of their printing presses for commercial printing – printing books, municipal documents and whatever the local market demanded. Thus the roles became reversed: what had once been the book printer's side-line was now the main activity of these companies, and book printing became secondary source of income.

Even if the system of suspending publishing permits had been abolished, the ansvaringar occasionally had to shoulder the role of publisher in press freedom cases. The most famous scandal paper of the era was Fäderne'slanedet (the Fatherland). In the 1850s and 60s it faced around 60 press freedom indictments, and the actual responsible publisher was protected by means of straw men taking on the publisher’s role. Lars Johan Hierta, who had himself used ansvaringar, felt that the system had degenerated: in the interests of the reputation of the press, he told a National Publicists’ meetings that the system of using fronts should be banned. He was supported in this by the likes of S A Hedlund.5

Lars Johan Hierta’s positions on the issue of straw men as publishers may seem hypocritical at first glance. In the 1830s he had himself systematically protected the publication of Aftonbladet by means of a series of obliging ansvaringar; a few decades later he and S A Hedlund roundly condemned colleagues who were using fronts. But Hierta had used fronts in his struggle against the King’s authority, in order to create a press that was not controlled by the state. Three decades later, certain unscrupulous publishers used this newly-won freedom to violate the rights of private citizens, without the publisher assuming personal liability.

My own view is that Lars Johan Hierta should be honoured for using a system of fronts to be able to continue publishing Aftonbladet and establish an independent press in the process; and that he was equally honourable in subsequently condemning the abuse of ansvaringar, as well as
in protecting the reputation of the press and removing threats of renewed state intervention.

Around the middle of the 19th century we can distinguish three main categories of newspapers: the conservative right-wing press, the rapidly growing liberal press and the popular press – new, provocative and entertaining papers aimed at the people who were pouring in to do industrial work in the cities.

For reasons that are easily understood, it was primarily onto this last group of newspapers that press freedom lawsuits rained. A paper like *Folkets Röst* (the People’s Voice) was directed expressly at the working classes and was described in many bourgeois papers as a scandal sheet.
Folkets Röst was a precursor of the social democratic press that began to take form in the later decades of the 19th century.

By today’s standards the division into right-wing and left-wing press was distinctly odd. The liberal papers were designated left-wing, while the social democratic press bore the epithet ‘socialist’.

A well-known liberal – bourgeois – editor-in-chief such as Harry Hjörne at Göteborgs-Posten was for many years the Chair of Vänsterpressföreningen (the Left-wing Press Association), which also included editors from e.g. Vestmanlands Läns Tidning and Nerikes Allehanda.

The Freedom of the Press Act requirement for a responsible publisher

Lars Johan Hierta made early references, in his diary, to the responsible publisher – apropos of the front system using ansvaringar. But the term responsible publisher had been coined. The Freedom of the Press Act refers only to ‘the publisher’. Every Swedish newspaper and periodical specifies who its responsible publisher is. We might wonder why the Freedom of the Press Act’s succinct ‘publisher’ was allocated the attribute ‘responsible’.

The word ‘publisher’ (utgivare) has several meanings in Swedish. A person who owns a group of newspaper companies can be said to be the utgivare of three daily newspapers, despite not being responsible for the content of any of them. So in order to distinguish between the utgivare-owner and the utgivare-journalist, the latter is referred to as the responsible utgivare.

The responsible publisher is appointed by the paper’s owner. No special qualifications are required in order to be appointed responsible publisher. The appointee must not be underage, have been declared bankrupt or be resident abroad. Aside from these formalities anyone can be made responsible publisher. It is in fact a civil right.

If the owner appoints a person as publisher for show, i.e. a person who is unable to assess and control content, then the owner him or herself becomes responsible.

The Freedom of the Press Act refers to the ‘assignment’ as publisher. An editor-in-chief may be employed at a paper and have a certain term of notice. But the editor-in-chief is not employed as responsible publisher on the same conditions. The assignment as responsible publisher is one that may be revoked at any time by the owner – and from which the publisher him or herself can resign at any time with immediate effect, without being bound by any term of notice.
The responsible publisher, in turn, can appoint one or more deputies. If the publisher's assignment ends for some reason, so does that of the deputy or deputies.

The Freedom of the Press Act is not some form of guild privilege bestowed on printers and journalists. The Freedom of the Press Act regulates civil rights that everyone can avail themselves of. It is in the nature of the beast that journalists have tended to rely on the Freedom of the Press Act in their professional activity to a greater extent than other population groups.

During the first century in which the Freedom of the Press Act was in force it was common for individuals with bourgeois professions – lecturers, priests, clerks etc. – to engage in publishing activities in addition to their main source of income. As the press became increasingly industrialised and the media offering more complex, journalists and professional publicists began to dominate the scene.

Now the pendulum is swinging back towards the 18th century as a result of the new information technology. No longer are enormous investments in printing presses or expensive physical distribution networks necessary. Instead a group of students, or any citizens at all, can make public their views and present facts online – at negligible cost.

In this sense, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression once again become a general civil right. But there is another side to this. The fact that the boundary between professional journalists and a broader public, that bluntly presents its views, is now blurred leads to difficulties for many individuals who become the object of aggressive or insulting attacks.

The Freedom of the Press Act's catalogue of offences

The Freedom of the Press Act contains a list of all press freedom offences, i.e. all acts that are punishable if they are committed by means of a printed publication. In all there are 21 forms of press freedom offences, specified in Chapter 7, Articles 4 and 5.

The first nine points are unlikely to have much bearing on the everyday activities of the average publisher in peacetime. They include high treason, instigation of war, treason and insurrection. On rare occasions a responsible publisher may be accused of unauthorised dealings with secret information and espionage. Modern intelligence activities rely to a considerable extent on open information, e.g. from the press, but this is almost always information that the responsible publisher has not gained 'unauthorised' access to.
Briefly, the other points under Chapter 7, Article 4 are:

- **Sedition.** It is a crime to incite someone to fail in his or her civil obligations, or to inveigle someone into disobeying a public authority.
- **Agitation against a population group.** The agitation crime consists in ‘someone threatening or expressing contempt for a population group or other such group with allusion to race, colour, national or ethnic origin, religious faith or sexual orientation’.
- **Offences against civil liberty.** Such offences may consist of attempts to limit the freedom of action of a political organisation.
- **Unlawful portrayal of violence.** This concerns portraying sexual violence or coercion in pictorial form. As with the child pornography offence, there may be circumstances in which the act is justifiable.
- **Defamation.** This is by far the most common press freedom offence. There is reason here to reproduce the wording of the law: ‘Defamation, whereby a person alleges that another is criminal or blameworthy in his way of life, or otherwise communicates information liable to expose another to the contempt of others, and, if the person defamed is deceased, the act causes offence to his survivors, or might otherwise be considered to violate the sanctity of the grave except, however, in cases in which it is justifiable to communicate information in the matter, having regard to the circumstances, and proof is presented that the information was correct or there were reasonable grounds for the assertion.’
- **Insulting language or behaviour.** This offence consists in reviling someone with offensive invective or allegations or other insulting behaviour.
- **Unlawful threats.** This press freedom offence consists in threatening another person with a criminal act in a manner intended to raise serious fears for his/her person or property or that of another.
- **Threats against a public servant.** To attack another person with threats of violence during that person’s exercise of his/her public authority.
- **Perversion of the course of justice.** To attack another person with threats of violence because he/she has e.g. filed a complaint, brought charges or given testimony.

The responsible publisher may have had reason to regard information as reliable at the time of publication, even if this information later proves to have been incorrect. At the time of publication, the responsible publisher thus had ‘reasonable grounds’ for his/her decision. It is a difficult task for a responsible publisher to convince a court – after the fact, when everyone has access to the correct information – that all reasonable measures to confirm the accuracy of the information had been carried out at the time of publication.
Financial defamation

Let me conclude this section on the catalogue of offences by indicating something that is not included, but which some commentators believe should be a press freedom offence: financial defamation. We have seen that it is a press freedom offence to defame a person, to subject that person to the contempt of others. But it is not, and cannot be, a press freedom offence to publish misleading or incorrect information about a business, which may cause it considerable financial damage.

It is evident that the media could inflict very great damage on legal entities by publishing incorrect information. On the other hand, financially-weak media companies could potentially be scared into silence if large-scale Swedish, and above all international corporations, threatened them with costly legal action and damages.

Here the legislator has clearly made the assessment that it should be possible for all activities in society to be the subject of open scrutiny by the media – including the activities of large corporations. This assumes that the media will handle this freedom responsibly. Put simply, how important is it that the media can carry out unconditional testing of new cars, without concern for the risk of enormous damage claims if the car is wrongly balanced and easily overturns in a sudden swerve to avoid an obstacle? (This particular situation was one that a technology periodical in Sweden had reason to mull over a few years ago.)

The question of financial defamation comes up every now and then in Sweden. Once, for example, there was a discussion about whether the powerful artificial sweetener called sodium cyclamate was hazardous to people’s health or not, and the issue of financial defamation came up. My assessment is that as long as the media deal with legal entities in a responsible manner, demands for introducing the concept of financial defamation will not gain a hearing. However, public opinion could easily shift following a few obvious mistakes by the media.

The jury in press freedom cases

An English word made its way into the 1815 Freedom of the Press Act: ‘jury’. In the opening article of the chapter on press freedom cases, the foreign word ‘jury’ appeared once, but after that the Swedish synonym nämnd was used consistently. ‘Lagligheten av åtalade tryckta Skrifter innehåll skall hädanefter alltid pröfwas av en Jury eller Nämnd …’ (The lawfulness of the content of indicted printed publications shall hereafter
always be tried by a jury or a nämnd...). Thus the term ‘jury’ made its discreet entry into Swedish legal language in 1815.\(^6\)

It is probably still the case – 200 years on – that juries are only used in press freedom cases. However, today the general public is informed about the jury’s role in a court of law; this knowledge is due to a great extent to TV depictions of trials in American and British courts.

The current Freedom of the Press Act consistently uses the word ‘jury’ and not its synonym nämnd. Today the task of appointing jurors falls to county councils. Jurors must be Swedish citizens who, according the current wording of the Freedom of the Press Act should be ‘known for their soundness of judgement, independence and fair-mindedness’. The 1815 wording only specified that they be ‘persons known for their civil virtue’.

The Swedish jury system was put to the test during WWII. In 1939, when war broke out, Sweden’s Minister for Justice, K G Westman, initiated several press freedom indictments. Torbjörn Vallinder notes in his book Nio edsvurna män (Nine sworn men) that during the first year of war, the jury convicted the defendant in virtually every case, but from 1940, juries tended to acquit defendants with increasing frequency.

Many regarded the jury in press freedom cases as a bulwark of the defence of the free word, however when the jury chose a verdict of acquittal in press freedom cases, the state would apply other measures. The recently-launched democratic campaign paper Trots Allt! was subjected to an extended transport ban and seven confiscations, all without a prior trial. Torbjörn Vallinder asks the question whether ‘acquittals by a jury perhaps did not reduce the overall extent of press freedom repression’.

Numerous publications of various categories in terms of political belief – democratic, communist and Nazi – were the objects of press freedom indictments. These were often driven by foreign policy. They could concern ‘opinions that are libellous, injurious or intended to cause discord with foreign powers …’ or ‘false rumours or untruthful statements aimed at endangering national security’.

Remarkably, the leading anti-Nazi writer in Sweden, Torgny Segerstedt at Göteborgs handels- och sjöfartstidning (GHT), was never charged. The editor-in-chief of Göteborgs-Posten, Harry Hjörne, describes in his memoirs Äventyr i tidningarnas värld (‘Adventures in the world of newspapers’), how the Chair of the National Information Board (Informationsstyrelsen), Sven Tunberg, viewed press freedom juries.\(^7\)

Tunberg had brought some clippings from GHT which showed how Segerstedt again and again had violated the spirit and the letter of the law. Any other newspaperman who had written what Segerstedt had would have been charged and convicted – a claim Harry Hjörne agreed with. It
was apparent that the Minister for Justice, K G Westman, was considering charges against the anti-Nazi at GHT, and that the Minister had sent Tunberg to Gothenburg to test the waters.

Harry Hjörne observed laconically: ‘You will not get a jury in Gothenburg to convict Torgny Segerstedt.’ The Chair of the National Information Board reacted vehemently: “Is this not dreadful? Is Sweden then not a realm in which the law applies equally in all parts of the country? There may not be one law for western Sweden and another law for the other parts of the country. The institution of the jury (as it has been devised) is a challenge to the rule of law, and must go.’

He and the Minister for Justice later felt vindicated in their view when a press freedom jury in Gothenburg acquitted a controversial and pro-German dean, Ivar Rhedin, of libelling Stalin. So Stalin, who had once been expelled from a seminary where he was a student in Georgia, had been libelled in Göteborgs Stifts-Tidning! The folksy dean was defended by lawyer Ivar Glimstedt, a known supporter of Torgny Segerstedt.

In a private conversation with Harry Hjörne, K G Westman complained about the press freedom jury and about the enigma that was Gothenburg: ‘A Nazi is charged with gross libel of Stalin. The law is unequivocal. And then one of the worst “Segerstedters” of all appears as his defence counsel.’ Perhaps it was so, Harry Hjörne explained to the increasingly incensed Minister, that counsel Glimstedt had suspected that in Stockholm the aim was to use a conviction against dean Rhedin to prepare an indictment of Segerstedt?

Professor Tunberg and the Minister of Justice were probably correct in their assertion that a press freedom jury for the entire country, based in Stockholm, would have convicted Segerstedt for his opinions on Hitler and Göring. So, the question still stands as to whether or not a locally or regionally-coloured jury is an advantage.

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Legislation rarely evinces literary qualities, but the Freedom of the Press Act contains some archaic-sounding sections of great beauty and gravity. The instructions in the Freedom of the Press Act are normally read out to the jurors at press freedom trials, as a reminder of the spirit in which they must make their decisions:

Each and everyone to whom has been entrusted the task of passing judgment on the abuse of press freedom, or otherwise of keeping vigil over the observance of this Act should, in discharging this task, always bear in mind that press freedom is a foundation of a free polity, always direct their attention more towards the unlawfulness of the subject and the thought than towards that of the expression, more towards the aim than the manner of rendering, and in case of doubt, should acquit rather than convict.
In the era of the party press

In the era of the party press, every opinion-forming newspaper had a party-political designation: *Arbetet* (s, for the Social Democrats), *Göteborgs-Posten* (fp, for the Liberals), *Svenska Dagbladet* (h, for the Conservatives), and so on.\(^8\) The editor-in-chief’s main activity was often the editorial commentary in leaders and cultural sections of the paper, while the managing editor led the news reporting. The standard division of labour was for the politically-responsible editor-in-chief also to be the responsible publisher. This category of publishers, in practice, became gatekeepers of a sort: their job was to ensure that anything that could be damaging to the associated party or the house ideology was winnowed out. These might concern the issue of how customs and customs protection were to be conceived, or if cinema advertisements should be allowed in a paper with a non-conformist readership.

Many people feel that this kind of publisher’s role goes against ‘the spirit’ of the Freedom of the Press Act. The Freedom of the Press Act, after all, is intended to safeguard freedom of expression and of opinion. The point of the Freedom of the Press Act is to enable all possible opinions to be presented in print, but that does not mean that the individual paper or periodical has to be open to all views. On the contrary, they may be allowed to be partial and biased.

In the era of the party press, a person who read a paper on a daily basis was likely to be absorbing a doctored, one-sided account of reality. A person who read several papers with different persuasions could compare them and be motivated to weigh up the differences and form his or her own opinion. But how many people read several papers on a daily basis?

**The consequences of professionalisation**

Towards the end of the 19th century, the country’s editors would get together at general publicists’ meetings. One aim was to distance the serious press from the scandal press. Another was to raise the level of press ethics. But it would be a long time before newspaper publishers and journalists could agree on the need for special training of journalists. A journalism training programme at the higher-educational level only appeared in the second half of the 20th century.

As the party press grew more anachronistic, as journalism training programmes expanded, as the journalist’s trade became more professionalised and state press subsidies were introduced, the position and function of
The responsible publisher

The responsible publisher changed. Previously, the political editor-in-chief had been the watchdog at newspaper companies. Now the managing editor became responsible publisher and editor-in-chief. The responsible publisher was no longer expected to include irrelevant political considerations; instead he or she was to make professional news assessments and abide by the generally-accepted ethical standards of the press.

It is one thing that the quality of editorial work has likely been improved as a result of professionalisation, and another that newspapers have ineluctably become more similar. Irrespective of a newspaper’s political allegiance, news reporters have the same training and responsible publishers make their decisions based on the same principles as their colleagues do.

Today’s responsible publishers are not recruited primarily for their stylistic talent or journalistic experience, but rather for their financial skills and administrative ability. Nowadays the same person is often editor-in-chief, responsible publisher and managing director of a media company. Unsurprisingly, a person with that kind of workload is unable to maintain a continuous dialogue with employees and supervisors about journalistic choices. The solution at some papers has been that the deputy responsible publisher, who is easier for employees to get in touch with, makes the decisions in practice, although the responsible publisher is on duty and is the one with the formal responsibility. This is not the way the Freedom of the Press Act intended it. The deputy is supposed to take responsibility only when the publisher temporarily relinquishes his or her assignment, e.g. due to sick leave or extended holidays.

The primary requirement in the Freedom of the Press Act is that there always be a clearly-indicated person who officially takes responsibility as publisher. And as far as that goes, everything is formally correct. But if it then emerges in a press freedom case that the responsible publisher did not know in advance about a difficult publication decision which he or she then had to take responsibility for, well, this is an internal problem between the publisher and the owner of the paper.

Responsible publisher for newspaper groups

The Swedish press is living with shrinking advertising revenue and finds itself forced to reduce employee numbers and restructure operations. New groups of newspaper companies and publishing houses emerge. An obvious aim is for several papers to share development and other potential joint costs.
In 2015, several newspaper groups announced that they were appointing a group responsible publisher for all the newspapers in the group. Thus the former responsible publisher of Eskilstuna-Kuriren is now group publisher for all the newspapers in the group. In Jönköping similar plans were afoot for newspapers that are part of the same group as Jönköpings-Posten.

One of the reasons behind this new thinking is that some of the content in all of the group’s papers is produced in a joint editorial office. The remainder of each local paper’s content is produced at the publishing location and is unique to it. The Freedom of the Press Act was not written for this new division of responsibilities. If the same person becomes the responsible publisher of all the group’s newspapers, this person will have no opportunity to make prior assessments of the locally-produced material in each local paper.

If the newspaper owner allows each local newspaper’s editor-in-chief to be responsible publisher, well, then that person will have no practical opportunity to preview the text and images edited at the group’s central editorial office. This last version of the problem currently exists at Göteborgs-Posten, which carries out joint production and editing of the group’s west coast papers. Here the solution has been to let each paper, regardless of its size, have its own responsible publisher; but in practice each individual publisher probably has to go with what is sent out from the central editorial office.

Today material is delivered to newspapers which, for reasons of time and other considerations, may be published without the responsible publisher having had a chance to assess it. Perhaps it could be argued that if the responsible publisher has accepted this delivery procedure, then he or she will have to take the consequences. But the fact remains that it is not consistent with the Freedom of the Press Act’s requirement that the publisher be able to pre-assess all material being considered for publication.

The Norwegian model: several responsible editors

In Norway, it is possible to have several responsible editors at the same paper. In the Norwegian model, a newspaper like Svenska Dagbladet could have one responsible publisher for the main paper, printed on plain white paper, and another responsible editor for the business and sport section, printed on pink paper.

This system could solve the problem of group-wide responsible publishers. The person who is close to the central location of production is responsible for its share of the content, while the local editor-in-chief is responsible for what is produced there.
Sweden’s daily press is in a financially tight situation, and is taking a number of measures to reduce costs and make production more efficient. It is against this background that we see the development towards group-wide responsible publishers. But the question remains whether group-wide responsible publishers can be considered to have the ability to pre-assess the content of all the group’s newspapers in the manner laid down in the Freedom of the Press Act.

For a Norwegian editor-in-chief, ‘paragraf 100 i Grunnloven’ (Article 100 of the Constitution) is what the Freedom of the Press Act is to a Swedish colleague. This article of the Constitution regulates freedom of expression in Norway. It was initially focused on printed publications; now it has been revised and is entirely media and technology neutral.

It is also worth noting that the Norwegian counterpart to the Press Council (Pressens Opinionsnämnd) – known as Pressens Faglige Utvalg – now also assesses TV and radio content. A similar reform has been discussed in Sweden, but appears far from agreement.

Norwegian courts, unlike Swedish ones, can award considerable damages, reaching millions of NOK, which would be keenly felt even by a financially-healthy newspaper.

**Responsible publishers on TV**

The Swedish press has a century-old tradition of freedom of establishment. It is a civil right to publish a printed paper. This is one of the cornerstones of the Freedom of the Press Act. But in broadcast media the initial situation was pretty much the opposite of freedom of establishment. The shortage of frequencies meant that Radiotjänst was initially run as a state monopoly.

The Press Council was created during WWI, before there were any national radio broadcasts and long before TV broadcasting began. During the period before and during the War, the Swedish press conveyed international news and war reports from a number of competing news agencies. The quality of the news material was often poor, and several of the news agencies were biased, and dependent on grants from one of the warring parties. This was the background to the creation of the Press Council – the newspapers’ own self-regulatory and quality improvement body – in 1917, and to the establishment a few years later of a press-owned, reliable news agency, Tidningarnas Telegrambyrå, or TT.

Today’s radio and TV channels are regulated by the Radio and Television Act, and by the government’s broadcasting licences for each company. The responsible publisher’s position has essentially been transferred from
the Freedom of the Press Act to the Fundamental Law on Freedom of Expression: the broadcast media's publishers have the same position as their newspaper colleagues. It may nevertheless be argued that the broadcast media's publishers have a more complicated, and at the same time circumscribed, task in comparison with newspaper publishers.

The Radio and Television Act and the broadcasting licences establish limits for the media company – not for a specific employee – and the company is represented by its Board and Managing Director, not by the person appointed as responsible publisher. A responsible publisher in public service TV, for example, is personally liable under the Fundamental Law on Freedom of Expression – and he or she is also responsible vis-à-vis the management for ensuring that broadcasts do not violate the terms of their broadcasting licence.

If a broadcast violates the Fundamental Law on Freedom of Expression, the publisher is personally liable and may be subject to sanctions. If a broadcast violates its broadcasting licence, the company is liable and may be sanctioned directly or indirectly – but ultimately the buck stops with the Board and the Managing Director.

From a publishing perspective, a daily newspaper is an integrated product and can therefore form an integrated area of responsibility. TV companies cannot be defined in the same simple fashion. A TV channel may choose to appoint a responsible publisher for the entire operation, or a number of publishers responsible for individual editorial sectors, e.g. news broadcasts, cultural programmes etc.

In Norway, daily newspapers are not regarded as integrated products – or more correctly, the view is that different parts of the newspaper may have different responsible publishers. If we choose to regard a newspaper in the same way as we regard a TV company, then it is natural to employ a system of several collaborating responsible publishers.

In liability terms, public service TV has a broad, flat organisation, meaning that there are a large number of responsible publishers appointed by the company. Indeed, attentive TV viewers will observe at the end of serious programmes that the responsible publisher is often specified. This creates an editorial environment in which the person with the ultimate responsibility for the programme also works fairly close to the ground.

Sweden's TV4 has opted for a more top-down type of organisation, with a small number of registered responsible publishers and a large number of deputy responsible publishers to whom work is delegated, meaning that management has commissioned them to function, for practical purposes, as responsible publishers for day-to-day broadcasting. If insurmountable problems and conflicts arise, the centrally-placed responsible manager
determines how to deal with them. It is natural for a commercial media company to want to maintain strong central control of operations, while at the same time making all routine decisions as close as possible to where they are implemented.⁹

The deputy

Under the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, the deputy responsible publisher is only to assume responsibility when the responsible publisher is prevented from carrying out his or her duties, e.g. in the event of illness or holidays.

According to the letter of the fundamental law, the deputy responsible publisher is a person who has the right to make decisions when the publisher is prevented from exercising his or her right to do so; as far as the fundamental law is concerned, the deputy responsible publisher is a substitute who is inactive most of the time. In practice, however, deputy responsible publishers have become a form of associate responsible publishers in the editorial workplace, who virtually every day make decisions on publishing issues when the regular publisher is busy wrangling over the budget or negotiating with the unions.

Many media companies – both in commercial TV and major daily newspapers – nowadays have several deputy responsible editors specified in their editorial staff listing. Under the Freedom of the Press Act, a newspaper has to state the place of publication and specify who the responsible publisher is. In formal terms, there is no reason to publish several deputies’ names. In day-to-day work this may have its advantages: readers with complaints usually accept that they make their complaint to the deputy if the responsible publisher is not available. The editorial staff listing, after all, suggests that the deputy is a form of second-in-command to the publisher.

From the point of view of the working editorial office, it is an advantage to have access to some authorised deputies, as the responsible publisher has increasingly taken on a management role at many media companies.

In an earlier section I described how a joint responsible publisher is appointed for newspapers or media companies which are part of a group of companies, and how each editor of the local newspapers is appointed deputy responsible publisher. This is not the way the Freedom of the Press Act was intended to work, but it is a practicable and unorthodox solution to a contemporary problem.

Speaking of contemporary problems, the current system of journalistic subcontractors creates problems in terms of publishing responsibility. It
is now common for independent content companies to provide a newspaper with material related to finance or sport, for example. In public service publishing operations, important and sensitive material is supplied by freelance journalists and their companies. In legal terms, the issue of responsibility is simple: whoever publishes the information bears full responsibility. The problem in practice is that the responsible publisher is unable to check how the subcontractor worked in the field during the production of the article or radio programme. The increasingly-common system of replacing employees with purchased material from subcontractors undermines the responsibility structure. The person who is responsible, in practice, for the preparation and production of texts or programmes bears no responsibility whatsoever for the publication of them. And the person who is the responsible publisher has very limited opportunities, in practice, to know whether the material meets acceptable standards of press and professional ethics.

To conclude: it should be noted that it is the owner of the media company who appoints the responsible publisher – and that it is this appointee who then appoints his or her deputy or deputies. This means that if the responsible publisher for one reason or another decides to resign, this decision will apply for his or her deputies as well.

**Constitutionally-protected websites**

The name of the Freedom of the Press Act may give the impression that it is a constitutional regulation of the newspaper and publishing businesses. But it is not a set of ‘guild privileges’ for the printing industry. Professional titles such as editor-in-chief or journalist are not even mentioned in the Freedom of the Press Act. The term ‘editorial office’ is mentioned in passing, as a place to which informants can turn with their information – without running the risk of having their identity revealed.

Press freedom is a general civil right. When newspaper companies began growing into major corporations during the latter part of the 19th century, ever-greater investments were needed in printing presses and typesetting companies in order to publish a daily newspaper. In principle, every citizen had the right to publish a daily paper, but in practice there were only a small number of people who were able to make use of this constitutional right.

Now the pendulum is swinging the other way. Thanks to new mass communication technology, it is now possible in practice for the individual citizen to act as an opinion-shaper and information distributor. Pri-
vate individuals and companies outside the media industry are entitled to apply for publishing certificates in order to have their websites protected. They thus enjoy the protection of the Fundamental Law on Freedom of Speech in the same way that established media companies do.

A publisher must be appointed and he/she will be liable for any offences against freedom of expression. Informants are entitled to remain anonymous, and employees may not disclose an informant’s identity. The general proscription on censorship laid down in the Freedom of the Press Act applies here too, meaning that public authorities may not subject publications to prior scrutiny. If a conflict arises between the Fundamental Law on Freedom of expression and the Personal Data Act (Personuppgiftslagen), the constitutionality of the Fundamental Law on Freedom of expression trumps the Personal Data Act.

The Swedish Broadcasting Authority (Myndigheten för radio och tv) issues publishing certificates for websites, following application. It is important to note that the authority may not evaluate the content of the website or the purpose of its activity.

Websites with publishing certificates can thus freely publish the names and addresses of individuals, without consideration for the restrictions imposed by the Personal Data Act. Many private individuals find it hard to accept that their names can feature on dubious websites, and that this can be done under constitutional protection – and that the Swedish Broadcasting Authority has issued publishing certificates.

If you have extensive freedom of expression, there will always be the risk that it is abused. If, instead, you have a strictly-regulated freedom of expression that prevents all forms of abuse, well, then that freedom of expression will be narrow and restricted.

**Disclaimers – contributors’ contracts**

The responsible publisher of a newspaper cannot draw up a contract with a controversial writer in such a way that the writer personally accepts any legal consequences of the publication of his or her texts. There are many writers who would be happy to assume publisher’s responsibility for their own articles, in order to get them published.

A writer who pens a furious, and possibly abusive, article does not cause any publicity damage by the writing itself. As long as the article consists of sheets of paper in a desk drawer, or these days of a file in a computer memory, it will not generate any trouble with the wider world. But if someone decides to publish it, the genie is out of the bottle.
According to this view it is not the writing in itself, but the action of making it public, that allows publicity damage to occur. The publisher has the power and the obligation to determine what is to be published and what may not be included in the publication.

If there was a system whereby controversial external writers could shoulder a personal responsibility for their own articles, then the newspaper would become more like a graffiti board and the role of the responsible publisher be reduced.

The Fundamental Law on Freedom of Expression lays down that direct (live) news broadcasts and broadcasts of certain religious services fall outside the publisher’s responsibility (the Fundamental Law on Freedom of Expression 1:8). And yet there are situations in which a publisher comes to an agreement with a contributor that he or she will take personal responsibility for his or her contribution. These cases are not about the responsible publisher not daring to take responsibility, but that the practical and technical preconditions are such that the publisher does not want to take responsibility. Live broadcasts of religious services are normally scheduled well ahead of the time they take place – and these days they are usually also broadcast as repeats, which affects the responsibility issue.

Now someone might object that a religious service will surely not lead to problems for the publisher. Don’t bet on it. A sermon may include opinions, founded on religion, about homosexuality and same-sex marriage – opinions that could be regarded as constituting agitation against a population group.

The destruction of legislative capital

In 2016 the Freedom of the Press Act will attain the venerable age of 250. This is a unique piece of legislation, enacted before the emergence of democracy and then becoming a prime promoter of democratisation – and safeguard of democracy for a very long time.

It may seem tactless and irreverent to take this opportunity, during this year of celebrating the Freedom of the Press Act, to raise the question of whether Sweden needs a modern, technology-neutral fundamental law on freedom of expression. When the issue of a new fundamental law was discussed earlier, someone came up with an apposite formulation about ‘the destruction of legislative capital’.

But we are left with the reality that media companies and managing editors are in fact technology neutral, while responsible publishers zig-zag between the Freedom of the Press Act and the Fundamental Law on
Freedom of Expression. If press subsidies are going to be maintained but revised, the solution will likely be technology-neutral. The media industry wants a technology neutral joint ethical review. In our ever-shifting media landscape, the Swedish dualist model of two technology-based fundamental laws appears increasingly anachronistic.

I spent more than twenty years as responsible publisher of daily newspapers. I was inducted into a journalistic tradition which had the greatest respect for, and faith in, the Swedish Freedom of the Press Act. That respect is even greater today, if such a thing is possible, but the faith has changed character. In the course of my journey I have come to realise that we need a flexible, technology-neutral solution.
Notes

1 See also the chapter entitled Internationell översikt (International overview) in my book Ansvarige utgivaren – Diktator eller syndabock? (The responsible publisher – dictator or scapegoat?) SNS Förlag 2008.


3 SPHII p. 75.

4 SPHII p. 48.

5 ‘Fatherland journalism’ has become a term of insult in newspaper circles. An interesting read for anyone who wants to hear both sides of the story is C S Dahlin’s Minnen (Memories). He was for many years the owner and editor of Fäderneslandet.

6 Torbjörn Vallinder’s book Nio edsvurna män (Nine sworn men), Carlssons 2000, is about juries and press freedom in Sweden, and forms the basis of this chapter. I have added to this my own experiences as defendant at a number of press freedom trials.

7 Harry Hjörne’s memoir Äventyr i tidningarnas värld (Adventures in the world of newspapers), Gebers Förlag 1965, pp. 204 ff. Harry Hjörne gives us an idea of how the press freedom jury in Gothenburg worked during WWII, and draws a vivid portrait of his competitor, Torgny Segerstedt. Anyone looking for a literary account of the two pugnacious newspapermen in Gothenburg should read the short story De två redaktörerna (The two editors) in the collection Vishetslärarna (The teachers of wisdom) by Ivar Lo-Johansson.

8 The last article Torgny Segerstedt wrote in GHT was about the political labelling of newspapers that existed in the era of the party press. It was published in GHT on 17 January 1945 under the heading I DAG (Today). Torgny Segerstedt: I DAG, Norstedts 1945.

The notion of progress

It was on a summer’s morning in 1706 that Johan Heinrich Schönheit was executed at Carlsten Fortress in Marstrand. His name is not especially well known in Swedish literature, but he played an incontestable and dark role in the history of Swedish press freedom, as his was probably the harshest punishment ever meted out for a press freedom offence. He had translated a novel by Grimmelshausen, not the more famous Simplicissimus but Histori vom keuschen Joseph (‘The life and times of the chaste Joseph’, published in Swedish as Den kyske Josefs levnadsbeskrivning), a satirical version of the biblical story which he translated and published in 1696. As was the norm at the time, the book went through the pre-censorship process. The censor found it ‘coarse’ and ‘blasphemous’, and confiscated the entire edition. Schönheit, who had been a police superintendent in Umeå, fled to Hamburg in order to avoid prosecution but was lured back to Sweden, arrested and put on trial.

This was during the final phase of Lutheran orthodoxy in Sweden, and religious rebellion was in the air. In his cell, Schönheit went through a religious conversion and began to preach against the clergy and the highest court (hovrätten), developing his own view of the holy communion which was of course blasphemous. After repeated prosecutions, the ‘disobedient’ and ‘obstinate’ Schönheit was sentenced to be executed. This was carried out by first chopping off his right hand (which he had used to write with), pulling his tongue (which had formulated the peccant words) out with a hook, and finally decapitating him. His body was then burned together with his confiscated publications – except the hand and the tongue, which were nailed to the pillory.¹
This was the last time anyone was executed for a press freedom offence in Sweden. It could be argued that Schönheit was sentenced primarily for his ‘blasphemy’ – but he was jailed because he had translated a work of fiction, and the act of burning his body along with what he had written was a clear indication from the authorities. Criminal thoughts were annihilated at the same time as the person who had thought them.

How quickly the political climate in a country can change: sixty years later, Sweden had the world’s first press freedom act enshrined in the Constitution. For my part I feel that such fundamental changes happen even faster today.

And it is fascinating to see how so many of those who have written about press freedom and freedom of expression over the centuries repeatedly associate these freedoms with a very clear and coherent notion of progress. 18th-century advocates of legislated freedom of the press and of expression vacillate, just as we to today, between the natural law argument (that man’s freedom is God-given) and the utilitarian argument (only by the freest possible exchange of ideas and knowledge can the ‘crafts’, i.e. the various trades, grow and become more important). It is an Enlightenment-era argument which has never really lost its clout in the struggle for freedom of the press and for free speech: ‘things will quite simply be better for everyone that way’; or free access to knowledge leads to both spiritual and economic growth.

This argument always echoes in the background in the works of those who strive for greater freedom of the press and of expression, such as Anders Nordencrantz and Anders Chydenius, both quoted throughout this volume. We should also remind ourselves that these were not just gallant thoughts about freedom; right from the beginning, press freedom – and not least the section in the 1766 Freedom of the Press Act that would become the Principle of Public Access to Official Documents – was regarded as an antidote to the corruption that hides behind ‘classified’ stamps.

Denying political opponents access to information was an important weapon in the power struggle between the Hats and the Caps political parties in Sweden; creating practicable rules of the game in politics and public administration was in itself an important argument for the benefits of press freedom. Here we catch sight of what has sometimes been described as the ‘Pandora paradox’ of freedoms: those who take up the cudgels for bold reforms aimed at openness and eventual democracy do not always realise how sweeping the consequences will be over time. This was the case with the white men and slave owners who signed the American declaration of independence, ten years after the Riksdag had adopted our Freedom of
the Press Act. It is doubtful that any of them realised what it would mean, in time, to found a nation on the express thesis that all humans are born equal with God-given, inalienable rights. And the question is whether the proponents of the Freedom of the Press Act could really understand the scope of the developments they were helping to initiate.

![Muslim demonstration against Muhammad cartoons but for freedom of expression in Sergels torg, Stockholm, February 2008. Photo: TT Nyhetsbyrå.](image)

The fact that a literary work should play such an important role at the darkest moment in the history of press freedom in Sweden is hardly strange. Fiction (just like the notion of progress) – regardless of the quality we ascribe to the individual work – has always been central to the history of press freedom, from the unfortunate Grimmelshausen edition in 1696 right up to our own era. The question of art’s own dimension – if it constitutes a special instance of writing and printing – is also an issue that keeps coming up.

As Carina Burman shows in her article, it was indeed the poets who got into trouble right away when Gustav III’s coup d’état rolled back the freedoms that had taken shape after 1766. The examples she brings up, from a theatre-history comment (albeit irreverent) by Kellgren in 1778 concerning the more serious prosecution of Thorild in 1792, nevertheless indicate
the very same pattern we can follow far into the 21st century: it is often fiction that positions itself at the limits and tests what can be said and what cannot. And this tendency continued throughout the 19th century, from the Crusenstolpe Riots in June 1838 because Magnus Jacob Crusenstolpe had been jailed for lese-majesty, to the lawsuits – better remembered today – against Fröding and Strindberg towards the end of the century. (The Crusenstolpe Riots were in fact a complicated business: what began as a public protest in defence of a popular writer – albeit with a reputation for scandal – and of freedom of expression and the press towards the end became what must be described as a Swedish pogrom, in which the windows of Jewish homes in Gamla Stan were smashed and the mob went in search of someone to lynch. The intended victims had left the city, however.)

The question of who ultimately holds responsibility for a printed and controversial text, whatever it may be, is shifted and passed around like the proverbial hot potato. From the discussion around 1766 about the printer’s, the publisher’s or the author’s responsibility to the late 19th-century issue of whether the Bonnier publishing house, in Strindberg’s absence, should be made the legal scapegoat for the blasphemy of putting down in print the price of a bottle of communion wine.

It is also fascinating to see how the printed medium is in a period of rapid development, in a way that can call to mind the emergence of the digital public space – which we have inhabited since the 1990s – with similar problems and opportunities, and to which we shall return. And not least Pär-Arne Jigenius’ discussion of the emergence of the institution of the ‘responsible publisher’ shows how both the attacks on, and the defence of, the increasing significance of press freedom are part of the constructive growth of a press ethic and an instrument of defence – and once again the notion of progress is there.

In fact, from historical writing on the rise of press freedom in Sweden we see a three steps forward, two steps back kind of approach emerging. The setbacks come after a period of rapid development. Gustav III’s restrictions of the 1766 Freedom of the Press Act begin in 1774 and are then gradually increased. It is only with the 1809 Instrument of Government and the 1810 Freedom of the Press Act that the bedrock for freedom of expression, which had only just been splintered, was restored.

An interesting question that emerges in Kai Ekholm’s brief history of developments in Finland concerns the tendencies in the area of press freedom that became the legacy of Swedish legislation. Finland was separated from Sweden at a historical juncture when the Gustavian, diminished version of the Freedom of the Press Act still applied. Would developments towards greater press freedom have occurred more rapidly if the country
had had a more radical Freedom of the Press Act on the books, like the one that was restored in 1809-10? Probably not, as its relationship with the occupying power/bigger neighbour, Russia, would have overshadowed these developments anyway.

These questions remain unanswered, as Tage Danielsson would have said.

Certain aspects of the fight for freedom of expression stick in your memory and in general historiography, while others fall into oblivion; this could be to do with the ‘anecdote factor’, that a story is memorable in itself, as well as with variations in political climate. Stories such as the one about Lars Johan Hierta and *Aftonbladet’s* cat-and-mouse game with Carl XIV and his officials are among those that stick. The enemies of freedom of expression here are clumsy oafs, in the manner of the policeman in old Chaplin films, with the clever Hierta and his frontmen running circles around them, ever ready to pull another publication certificate from a desk drawer. The same applies to the story about Anders Lindeberg, sentenced to death for lese-majesty by the choleric king in 1839 – as an ill-considered ‘deterrent’ miscarriage of justice – and calmly observing that it would be appropriate to be decapitated on one’s birthday.

An interesting circumstance of the sentence against Lindeberg is that the lawsuit was based on a hand-written petition to the Parliamentary Ombudsman that contained the ‘libels’ against the King (it had to do with Lindeberg’s attempt to open a theatre), and not on the version of the same text that Lindeberg had printed. The prosecutor took this route in order to avoid turning it into a press freedom case, as he did not want to have to take the opinion of a jury into consideration. This may look like a technicality, which of course it was, but the tactic itself would develop into an interesting pattern. The Freedom of the Press Act was a fundamental law, and if you wanted to silence dissidents you tried to get at them by means other than applying this fundamental law, which often was and remains more radical and progressive than those in power – at least in some eras.

The anecdotes about Hierta and Lindeberg are true, in the historical sense, but they also fit nicely into the bigger story I hinted at initially, the one about a sort of uninterrupted progress: opposition to and attacks on ‘naturally’ growing freedom of the press and of expression can be described as a kind of outmodedness, and those that represent it turned into the lingering doormen to the past. This image becomes much more complicated as we approach the turn of the 19th century and eventually the second world war.
A frenzy of prosecution

Writers such as Strindberg were happy, periodically, to let themselves be portrayed precisely as representatives of the modern and the new; we tear down the old in order to bring air and light, as he himself wrote in the poem *Esplanadsystemet* (1883). For him, as for those who backed Fröding in his press freedom case, it was a matter of general cultural radicalism. However, towards the end of his life Strindberg was among those who aligned themselves with leftist liberals and social democrats, and allowed himself to be fêted by them as a kind of national poet of the left – including by the younger Hjalmar Branting.

Branting and his friends on the left – he himself, of course, made the ideological journey from the liberal student association, Verdandi, to social democratic ‘chieftain’ – were among those who were at the receiving end of the prosecution frenzy, which first began to seethe in the 1880s and then returned to the boil around the time of the Ådalen shootings, in 1931. Just as before, a lot of effort was put into finding alternative methods of clamping down on disagreeable views in print than those that risked leading to press freedom cases and thus to conflicts with the Freedom of the Press Act – a pattern that was repeated yet again during the second world war, with different people in charge. Particularly dissidents on the left who had formulated ‘forbidden thoughts’ in print were occasionally prosecuted and sentenced and jailed in the years after 1880 on grounds other than offences against the Freedom of the Press Act.

In 1887 August Palm, a prominent social democrat, was given a sort of ‘umbrella sentence’ for several different offences he had allegedly committed, including ‘sedition’ (spoken) in a speech in Hudiksvall. But to this were added a number of sentences for ‘libels’ of various persons in authority which he was purported to have committed in print, in *Social-Demokraten*; these two latter offences should actually have led to fines, but adding it all up made for a three-month prison sentence on Långholmen, which he served in 1887–88.

The following year it was Hjalmar Branting’s turn to be jailed for articles he had published in the same newspaper, *Social-Demokraten*. This time it was a case of blasphemy, or rather denial of God, which still came under the Freedom of the Press Act (he had printed an article by Axel Danielsson from the Malmö newspaper *Arbetet*), and the sentence succinctly read ‘denial of God and of an afterlife’. Interestingly enough, the prosecutor to this end activated a provision that was part of Article 3, Item 2 of the Freedom of the Press Act, which had not been used since Eric Gustaf Geijer
had been prosecuted in 1821. Branting was sentenced to three months in prison, and served his sentence in 1889.\(^3\)

Sentences fell thick and fast during this period, particularly against opinion makers on the left, and the list of those who were sentenced for texts they had written and printed could be made considerably longer. It was furthermore clear that Branting, for example, wanted to be tried in a press freedom case. There was a symbolic significance in showing that the authorities did not respect even the ultimate protection of freedom of expression contained in the Constitution. To publicly put the Freedom of the Press Act to the test – to see what it allowed and did not allow and preferably to shift those limits – was one of the aims of inviting such lawsuits. In short, to stretch the limits of freedom of expression. Branting had written a few years earlier – in a letter to August Strindberg, no less – that he ‘wished for himself a press freedom indictment’, but he had probably been expecting fines rather than a prison sentence. In the years that followed it was notable that often newspapermen and women were prosecuted, but usually attempts were made to avoid an actual press freedom case, not least because of the unpredictable jury the prosecutors were then stuck with. Thus in 1917 the newspaperman Zeth ‘Zäta’ Höglund was sentenced, and harshly so, for ‘conspiracy to treason’ because he had taken part in a peace congress: a three-year sentence which was eventually reduced to eighteen months.

When Else Kleen, whose case Agneta Pleijel discusses in her essay, was sentenced to prison in 1939 it was in a press freedom case, however. In her foreword to Den gröna ön (‘The Green Island’), a polemic written in the form of a novel by Bruno Poukka (who had been convicted of murder), about the appalling conditions in the prison on Långholmen, where he had served his sentence, Kleen wrote that while the book was a novel, it was based on the author’s own experiences, and that it confirmed the poor conditions she herself had seen as a journalist. Kleen had made an agreement with Bonniers, the publisher, in which she assumed a kind of responsible publisher role for Poukka’s book. Thus it was she, and not the author or the publishing house, who was liable for his claims regarding the treatment of prisoners on Långholmen. She was sentenced to two months in prison for ‘gross abuse of freedom of expression and served her sentence on Långholmen, in the winter of 1940.\(^4\)
The second world war and its consequences

As several contributors to this volume describe, the press freedom situation during the second world war was strange and complicated. Klas Åmark, the historian, shows in his major research synthesis of Sweden during the war, *Att bo granne med ondskan* ('Living next door to evil'), how the Swedish press was the least controlled in all Europe during the war years – the British press included. And yet the Swedish press was closely controlled, both on the direct orders of the prime and foreign ministers as well as, during 1940–43, through the extraordinary creation that was ‘Statens informationsstyrelse’ (the National Board of Information), explored in Nils Funcke’s contribution. It can be said without hesitation that the Swedish press during the war was under a condition of ‘semi-censorship’ – not least after the Minister for Justice, K G Westman, activated a provision in Article 3, Item 9 of the 1810 Freedom of the Press Act, on legal intervention against statements that were inappropriate from the foreign policy perspective: ‘opinions that are libellous, injurious or intended to cause discord with foreign powers’. The next step was to activate the following provision in the same article of the act. This had been added in 1812 and could lead to confiscation without trial when the publication was not libellous or injurious, ‘but when a misunderstanding with a foreign power had arisen as a result of it’. Funcke deals with this in greater detail. As Klas Åmark describes in *Att bo granne med ondskan*, this confiscation clause was usually used against left-leaning newspapers, but liberal newspapers such as *GHT* and *Eskilstuna-Kuriren* were also subjected to crackdowns.

When Thomas Mann, writer and Nobel laureate, visited Sweden on the eve of war, in September 1939, to give a speech at the international PEN congress, things were still done discreetly: the Swedish Foreign Ministry sought out Mann and more or less appealed to him not to give his speech, ‘Das Problem der Freiheit’, as it could cause controversies with Nazi Germany. They need not have worried – the congress was cancelled due to the
outbreak of war (but the speech, in German, was published in Sweden that same year by the exiled publisher Bermann-Fischer).

Things were worse for Ture Nerman, who had already been sued for defamation during the first world war – albeit not in a press freedom case but for having shouted ‘murderers’ at a parade by the soldiers who had participated in the Swedish brigade, as volunteers, on the White side in Finland’s civil war; his speech at his trial was documented in his pamphlet entitled *Svarta Brigaden*. On that occasion he was sentenced to a fine.

When, in the autumn of 1939, he wrote in his well-known anti-Nazi periodical, *Trots Allt!* about the failed assassination attempt on Hitler in a piece entitled *Hitlers helvetesmaskin* (‘Hitler’s infernal machine’), the Swedish authorities caved in to pressure from the German Legation (which regularly applied such pressure on account of different newspaper articles). So Nerman was sentenced under the Freedom of the Press Act. All at once, the fossilised parts of Swedish press freedom legislation were brought to the surface – a clear example of ‘two steps back’ in the shadow of the war. For his leader piece, Nerman was sentenced to three months on Långholmen in 1940.

When Karl Gerhard, the revue artist, sang his famous song *Den ökända hästen från Troja* (‘The notorious horse from Troy’) at Folkteatern in July 1940, it was at a time when it seemed that Germany had essentially won the war in Europe. The US had yet to get involved, and Germany had a non-aggression pact with the Soviet Union – in that situation, Germany looked like the masters of Europe. At that moment, Karl Gerhard had the audacity to perform a song that warns of home-grown Nazis as traitors, as well as of the transfer of German troops through Sweden, which had just started – both
were ‘Trojans’. Karl Gerhard himself later claimed that both Prime Minister Per Albin Hansson and Minister for Foreign Affairs Günther appealed to him to stop performing the number – until the police, in an unusual move, made use of a completely different law, Ch 13 of the Royal Regulation for the Cities of the Realm (Kungliga Ordningsstadgan för Rikets Städer), which prohibits indecent conduct in a public place. The song was
not in print, of course, as it was performed on stage – but it is nevertheless worth noting that once again an unusual legal application was applied to prevent ‘inappropriate’ opinions from being spread, all to avoid making it evident that censorship applied in Sweden and that the Freedom of the Press Act had been set aside – which of course was the case. (It is also possible that the use of that particular law was also a warning to Karl Gerhard that his widely-known homosexuality could otherwise be used against him – homosexual acts were criminal until the law was changed in 1944.)

As the historian Paul Levine and others have shown, an important change of direction occurred in Swedish refugee policy, as well as towards Nazi Germany in general, in November–December 1942.7

One of the subjects that were off limits to Swedish papers, and would inevitably have led to comments by the National Information Board if broached, was the situation in Norwegian prisons and prison camps – which led to the famous front page of Göteborgs handels- och sjöfartstidning (GHT) on 12 March 1942 where, under the headline ‘In Norwegian prisons and concentration camps’, there was large white space where the article should have been. An impoundment had been imposed on GHT – this had been a joint action by several Swedish newspapers who were all going to publish information about what was going on in Norway, but who were all banned from printing their articles. Torgny Segerstedt, the editor of GHT chose, in a stroke of publicistic brilliance, to leave the space after the removed text for all to see. Conditions in Norway, or rather an open discussion about them, was one of the most sensitive points for the National Information Board.

They were also at the core of the indictment of Israel Holmgren, which Agneta Pleijel describes in detail in her article. In his pamphlet Nazisthelvetet (Nazi Hell), published in September 1942, he had described not just the mass murder of Jews in Poland but also how prisoners of war and political prisoners were treated in Sweden’s occupied neighbour, Norway. The archives of the Swedish Security Service contain instructions sent directly from the Ministry of Justice, dated 22 September and signed by the acting Minister for Justice, Thorwald Bergquist, that the police ‘promptly’ impound the entire edition.

On the same day, Minister Bergquist sent a request to the Chancellor of Justice for a pre-prosecution investigation against Holmgren. The prosecution was brought on 26 September by acting City Public Prosecutor Österdahl in Stockholm. Thus this legal action began at the same point in time as large groups of Jewish prisoners began arriving to the gas chambers at Auschwitz-Birkenau.
The case against Holmgren was carried out in phases, and was followed with interest not least by Sweden’s Nazis. Holmgren was indicted for a press freedom offence – or, more specifically, for ‘opinions which are libellous, injurious or intended to cause discord with a foreign power, and which were directed principally at internal conditions in Germany’ and ‘against Germany’s external relations’. The legal proceedings went on for several months, but reached an absurd peak on 16 November, as recorded in the report of the proceedings: Holmgren’s lawyer, Hemming-Sjöberg, had asked a question about the veracity of the confiscated publication – did it matter whether what had been forbidden was true or not? If all of these violations were actually taking place? Prosecutor Österdahl replied: ‘As to whether the information provided therein is correct or incorrect, this is of lesser significance in the Prosecutor’s view. The decisive matter is in what way, in what context and under what circumstances the information was presented.’

But as the case against Holmgren proceeded, the political climate changed. Newspaper after newspaper was now writing openly about the ongoing mass murder of Jews in German-controlled territories. The entire process is described in the collection of documents compiled by historians Mattias Tydén and Ingvar Sandberg, Sverige och Förintelsen (Sweden and the Holocaust), where we can read how increasing numbers of newspapers published essentially correct facts and figures about the Holocaust while it was underway – as in GHT on 18 October 1942, with a first-page article by Hugo Valentin, across four columns and with the headline UTROT-NINGSKRIGET MOT JUDARNA (The war of extermination against the Jews). Other newspapers followed, and soon correct information about the genocide could be read in DN and UNT. None of these articles appears to have been the subject of confiscation.

When the Norwegian state police, in November 1942, carried out a series of raids on Jewish homes and then sent more than a thousand Norwegian Jews by boat to Auschwitz, a tremor ran through Swedish public opinion. This was the most forbidden subject of all to discuss in public – German policy towards the citizens of occupied Norway. In a move likely intended to get round any attempts to stop news reporting, the Church of Sweden as well as the Baptist Union of Sweden declared the first Sunday of Advent 1942 a day of prayer for Norway’s Jews, and outside Gothenburg Cathedral around a thousand people assembled carrying torches in protest at what was happening in the neighbouring country. A floodgate had been opened: the Coalition Government realised that public opinion supported the Jews, and all restrictions were lifted against Norwegians crossing the Swedish border.
When, in December, *Dagens Nyheter* (DN) asked its readers what the most important event of 1942 was, the majority replied ‘the deportation of Norway’s Jews’ – and this result was published on the front page on 31 December. And indeed, as the new year began, the press freedom situation had also changed. Israel Holmgren was pardoned by the King in October 1943.

**After the war – ‘incitement to hatred’**

There were also several lawsuits against various Nazi groups before and during the war. For example, representatives of NSAP (the ‘Lindholmers’) were sentenced several times for ‘disorderly conduct’ when they were involved in spreading anti-Semitic propaganda in Stockholm in the 1930s.

But after the end of the war, society had another realisation to deal with – it was faced with the Holocaust as historical reality. At the same time, Sweden became a centre for the continued distribution of anti-Semitic and Nazi propaganda across war-torn Europe. Many of these publications emanated from two individuals who had been very active as Nazis during the war: Einar Åberg, a bookseller, and Carl Ernfrid Carlberg, a businessman.

In 1948, the offence ‘agitation against an ethnic or national group’ was added under the Freedom of the Press Act – and the law initially became known as ‘Lex Åberg’.

Einar Åberg had carried on publishing anti-Semitic and racist pamphlets in many languages, and Sweden drew criticism from several international organisations and foreign governments. Åberg was the first person to be sentenced for the crime, initially – and on several occasions – to fines, but in 1954 and 1956 to three months in prison as well.

The article on agitation against ethnic groups has continued to cause fierce debate as it constitutes a clear restriction on freedom of expression, and two lines of argument continue to face off in this debate – including among those who reject racist propaganda as such. One line of argument says that repugnant ideologies cannot be forbidden, and neither can their expression in writing and print; instead they should be refuted with objective arguments. The other claims that the connection between hate propaganda and genocide is apparent for purely historical reasons, and that a state governed by the rule of law must draw a line.

Einar Åberg also became known as a ‘Holocaust denier’, since several of his publications tried to claim that Nazi Germany’s genocide of Jews and Roma had never happened. But Swedish legislation has never gone as far as French or Austrian legislation, under which it is a crime to deny the Holocaust; the Swedish position has been that it must be possible to discuss
a historically-verified event openly – in particular if it involves terrible crimes. The incitement to violence against and disdain of groups of population on grounds of ethnicity, religion or sexual orientation are, however, criminal offences. Swedish (and Nordic) legislation has thus chosen the middle ground on this issue.

**What is fiction?**

In the most famous press freedom cases against literary works during the 19th century, such as those described in detail by Carina Burman – against Strindberg’s *Giftas* or Fröding’s *En morgondröms* – it was not a question of whether what was being portrayed had happened in reality or not (as the question was later formulated by Israel Holmgren’s lawyer, in a completely different context). No one claimed that Fröding really believed in his idyllic sex scene; it was the subject that was banned.

Later in the 20th and 21st centuries, the issue appears to have shifted. In the few, but very interesting and very sensitive cases where press freedom actions have been brought (or been threatened) against works of literary fiction, the question has been: What is fiction? *Is* it fiction?

The most famous case is the one to which Agneta Pleijel devotes much space, brought against Ing-Marie Eriksson’s novel, *Märit*. The novel became the object of a lawsuit in 1966, in which some individuals stated that they recognised themselves (and in one case a house belonging to one of them) in the novel’s storyline, and therefore also considered themselves hung out to dry as perpetrators of the violation of the intellectually disabled girl whose character had given the novel its name. Thomas von Veggiesack, summarised by Pleijel, elucidates the case in detail in his essay, published in *Bonniers Litterära Magasin* (BLM 4/96), ‘Skandalen Märit’ (‘the Märit scandal’), in which he points to the absurdity that several of the lawyers involved in the case – including Eriksson’s own defence counsel, Göran Luterkort, and, more surprisingly, the then Chair of Författarföreningen (the Swedish Association of Writers) and Appeal Judge Jan Gehlin – fail to regard Eriksson’s story as fiction, even though the book’s title page said ‘a novel’. Imagination is set aside – if it ever even existed. Von Veggiesack writes that Luterkort opened ‘the proceedings by admitting that the plaintiffs were right when they claimed that the fictional characters in the novel had been based on them, and that a number of the passages in the book cited by the prosecutor “were intended to subject them to the disdain of others”. But, Luterkort added, the allegations were true and the author had reasonable grounds for making them’.
Thus the characters in the novel were not just identical with real-life persons; the ‘blame’ directed at them by the author was also justified. An odd line of defence, you might think. But Gehlin, too – who was not just a lawyer but also, at the time, the foremost union representative of Swedish writers – issues his verdict on the novelistic fiction thus: “‘Is it really in our interest,” Gehlin asked, “to give the general public the idea that writers have, or want to have, a privileged right to harm their fellow men?”.

Eriksson was convicted and sentenced to fines. It undoubtedly looks as if it was fiction itself – imagination – that was disqualified as an ingredient of novelistic art. In a court of law.

When von Vegesack wrote about the case in BLM thirty years later, the conflict was brought back to life, and Göran Luterkort replied to von Vegesack in the following issue. Von Vegesack noted drily: ‘What Göran Luterkort does not understand is that a novel’s contents do not coincide with those of reality.’

Should a court determine the degree of fiction? Fifty years have now passed since the case against Ing-Marie Eriksson’s novel, but the issue has not been resolved. No case against a novel has been successful in the courts since then – but the possibility does exist. Pleijel mentions Carina Rydberg’s Den högsta kasten (The highest caste), from 1997, and Maja Lundgren’s Myggor och tigrar (Mosquitoes and tigers), from ten years later, as examples of novels in which people still living have recognised themselves in the characters and also claimed that other readers could. No prosecutions were brought in these cases, just as none was brought in Norway when a relative of Karl Ove Knausgård claimed that he had defamed his dead father in the first volume of Min kamp (My Struggle), 2009. Rydberg, Lundgren and Knausgård all write novels intended to gauge the difference and distance between fiction and descriptions of reality, which of course is a serious issue for novelistic art to explore – and indeed something it has done throughout its existence. Occasionally someone has wanted to try the matter in a court of law. But would a court today be certain to rule in favour of fiction?

Fiction – in the form of sketches of imaginary figures – was in fact convicted of a child pornography crime by the lower courts in one of the hitherto most widely reported cases this century in the Manga Case from 2010–2012.

In it a translator of Japanese manga comics was charged with possessing, in his large collection of such comics (in digital format), some albums in which childlike cartoon characters were involved in and subjected to what was described as ‘sexual activities’ and/or abuse. The legislative history of the current legislation, from 1999, specifies that drawings with child pornography content are also intended to be covered by the Penal Code.
One of the arguments for criminalising images is that they could be used to entice children into sexual acts.

Thus the law here makes no distinction, in principle, between drawings, i.e. fictional representations, and actual photos or films of abuse perpetrated against real children – a remarkable change to Swedish legislation, which has also been criticised on several occasions.

The translator in the Manga Case lost in the lower courts, but was finally acquitted by the Supreme Court in 2012. The Supreme Court’s reasoning centred on freedom of expression and information under the Instrument of Government – the Freedom of the Press Act and the Fundamental Law on Freedom of Expression were not applicable to the case with respect to 38 of the images. The Supreme Court found that a criminalisation of these pictures of imaginary figures would be beyond what was necessary with regard to the ends for which the penal regulation had been laid down (cf the principle of proportionality). One picture, however, was judged to be realistic and therefore covered by the regulation. Possession of this image was nevertheless regarded as defensible in view of the circumstances of its possession, and the translator was therefore acquitted. Göran Lambertz, a Supreme Court Justice, commented on the verdict on Aktuellt (a TV news programme) by saying that it is not possible to criminalise drawings of imaginary things without encroaching on freedom of expression (15 June 2012). But fictional images may thus still be criminal.

The Principle of Public Access to Official Documents, digitisation and the EU: the issues at stake

In one way the digitisation of the media and of documents has shown how modern the original Freedom of the Press Act from 1766 was, and still is. Precisely those issues that Chydenius and other forward-thinking reformists and Enlightenment thinkers tried to resolve returned charged with import and provocative all over again when it became possible to make official documents available in digital format. And surely none of the press freedom advocates of 1766 had in mind that people would rush to the Royal Palace or the Riksdag and demand to be shown reams of documents of all kinds; they were simply trying to draw up a set of clear rules for politics and public administration, and prevent the use of the ‘classified’ stamp as a party-political weapon. But in the process they opened, as other reformists did, a bigger Pandora’s box than they realised, and this box has since proven difficult to shut.
Three steps forward, two steps back – press freedom and progress over 250 years

The Principle of Public Access to Official Documents became a powerful weapon in the fight against corruption. Today we are grappling with the issue of how to make documents available when you can download several decades’ worth of authorities’ records and correspondence in half a second with a few simple clicks. Integrity stands more starkly against public access than ever before. What happens, in such a situation, to masses of names and personal data which it is simply unrealistic to block or prevent access to – and would such blocking be desirable? It could be said that digitisation, the growth of the worldwide web and social media have meant that we are now in the midst of a renegotiation of what the terms ‘private’ and ‘public’ mean – a renegotiation that even the experts cannot as yet see the full implications of.

In Sweden’s Data Protection Act (Personuppgiftslagen) and various reforms aimed at EU harmonisation, the fundamental problem has been shifted from preventing abuse of confidentiality provisions to how to guarantee protection of individuals’ privacy. As Nils Funcke points out in his article, this has been a serious democracy problem in Sweden’s adaptation to the EU. Its member states belong to two different traditions in terms of public access: the central European system, in which secrecy is often the rule and public access an exception requiring consideration, and the Swedish system from 1766 which takes exactly the opposite approach. In Germany, for instance, privacy protection is often cited in justification of secrecy. I can currently read certain basic information about the Swedish Prime Minister’s taxes, but not about the German Chancellor’s. But I am unable to obtain access to the medical records of either. We set the bar for privacy at different levels, but sometimes they coincide: for my own part, I do not want my medical records to be an official document, or for them to be on the table when I apply for a job. Still, I also know that the uniquely strong position held by the Principle of Public Access in Swedish public administration is our foremost vaccine against corruption, which has traditionally been at a low level in Sweden from an international perspective.
This problem has in no way been solved, and the more recent reviews of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression (e.g. SOU 2006:96) have tried to identify some sort of harmonisation, in which both press freedom and the Principle of Public Access are made independent of technology, without requiring us to lower the bar to a level where other EU countries might nod approvingly, but where the unique and, from an Enlightenment perspective, democracy-promoting Principle of Public Access to Official Documents would be less radical. It would be gratifying to see in these efforts the same foresight and originality that the thinkers of 1766 brought to their legislation; they came very close to the rallying cry of digital activists in the 1990s and 2000s: ‘Information wants to be free!’.

Funcke also points to another very important problem – the fact that so much of public service today is contracted out to privately-owned companies, under the New Public Management Model (beställare/utförare-modellen), and that this neutralises parts of the Principle of Public Access to Official Documents. Since the 1990s there has also been an occasionally heated debate about how this has happened and how it has been used in ways that have nourished the very corruption that the public access rules in the Freedom of the Press Act have for so long managed to keep at bay. At the time of writing, an important Riksdag debate is in progress on these subjects, and an inquiry report will have been presented by the time this book goes to press.

In the final pages of his essay, Kai Ekholm asks an attendant question, as important as it is affecting, about what is actually happening to the sudden growth in freedom of expression that the Internet initially constituted. Today we see how a vast nation and heavyweight economy like China has become increasingly skilled at controlling the entire Chinese part of the Internet – and these new trends do not stop there. Instead there is evidence that material written anywhere online, but which the authorities consider as relevant to Chinese circumstances, can be not just controlled but also muzzled. Other countries, including Iran and Russia, have sophisticated software with which to control what citizens see and do not see on the Internet and local media. Unfortunately, examples of this are very numerous.

Trying to roll back technological development is neither feasible nor desirable. That non-democratic states such as China and Iran use digital surveillance to keep their citizens in check is no surprise to anyone – such is the nature of the totalitarian state. But at the same time, freedom of expression is under increasing threat from surveillance programmes in democratic states too – albeit always with reference to citizens’ ‘security’. In order to protect you we have to monitor all digital traffic, if not in con-
tent terms then at least who communicates with whom, how and when. Otherwise you are in danger. Again and again we see how this information is used to chip away at time-honoured civil rights.

In November 2013 PEN America, the writers’ organisation, published a study based on interviews with its own members that showed how one in six writers were hesitant about writing certain things on digital and social media – they knew they were being watched by their own Government and feared being registered. Self-censorship today is a fact of life even in the countries that regard themselves as democratic.

Technology, I repeat, cannot be abolished. Knowledge cannot be buried and forgotten. But an awareness of the necessity of watching the watchers has to be raised to a level where we can demand responsibility from those who spy on us – but who say that they are only watching over us.

Oddly enough, the issues surrounding our new freedoms are formulated in much the same way now as they were in Sweden in the 1760s. New technology creates new spaces for the battle between public access advocates and the controllers-that-be – but the issues are almost exactly the same. Personally, I would like to believe in the same advances towards greater civil liberty as the 1766 reformists did – and that what we are seeing at the moment are the proverbial two steps back that follow the three steps forward. But we need to remind ourselves all the time that we have a legacy to preserve – and that our legacy is under threat.

To be continued.
Notes

1 Folke 2012.
2 Ilshammar 2012.
3 Ilshammar 2012.
4 Lundgren 2012.
5 Åmark 2011.
6 Nerman 1918.
7 Levine 1998.
8 Svanberg 1997.
9 BRÅ (Brottsförebyggande rådet, the Swedish National Council for Crime Prevention) report 2001.
CONSTITUTIONAL PROTECTION FOR FREEDOM OF EXPRESSION
Constitutional protection for freedom of expression

Finland: Confrontations and turning points

Martin Scheinin

This chapter is divided into four main sections. The first, introductory section contains a general overview of how constitutional protection for freedom of expression developed in Finland from the Swedish era until the new constitution came into force in 2000. The chapter further focuses on three major challenges to freedom of expression following the constitutional reform, i.e. in the 21st century. The second section deals with the relationship between freedom of expression and the counter-terrorism measures introduced after the terrorist attacks on 11 September 2001.

The third section introduces and assesses the established practice of the European Court of Human Rights (ECHR) regarding freedom of expression in Finland, with the principal aim of trying to understand why the ECHR has delivered so many judgements against Finland precisely in the area of freedom of expression. The chapter concludes with a brief fourth section in which the challenges posed by the Internet to the traditional concept of freedom of expression are assessed, particularly in the light of the ECHR ruling in the Delfi Case.

Overview: Freedom of expression in Finland 1809–2000

The period of autonomy

In independent Finland, it has been taken for granted that the Constitution would safeguard freedom of expression, a tradition that goes back to the Swedish Freedom of the Press Act from 1766. The same idea also per-
sisted during the Russian era between 1809 and 1917, when Finland was an autonomous part of the Russian empire, and from 1863 onwards in effect also had its own constitution and laws. Russian authorities and Russian laws nonetheless extended their influence to Finland, which served as a reminder to the Finns of the importance of freedom of expression and a constitution of their own.

In 1809 when Finland was incorporated into the Russian Empire as an autonomous region, Tsar Alexander promised the Diet of Porvoo that the country’s Constitution, religion and laws would be respected. Although Finland had its own legislative assembly consisting of four estates, this was not convened for a period of half a century. As part of its administrative procedure, Russia extended pre-censorship to Finland in 1829, i.e. during the period when the estates were not convening.
Constitutional protection for freedom of expression

When Alexander II finally reinstated the Diet, the estates used the first opportunity – the Diet of 1863–64 – to pass a law on freedom of expression. The Tsar ratified the law, but in such a manner that it would only apply until the end of the next Diet i.e. 1867. The administrative system of pre-censorship was then in force once again, albeit with variable intensity of application.¹

Freedom of expression was very much under threat particularly during the periods of oppression, when Russia attempted to strengthen its grip on Finland by shifting or violating the country’s autonomous position. Pre-censorship was applied² by means of the February Manifesto.³ In 1899, Tsar Nicholas II tried to impose ‘national laws’, i.e. Russian laws, in Finland and also to incorporate Finnish compulsory military service into the Russian armed forces. The manifesto was the beginning of the first ‘period of oppression’ and led to widespread protests, including what became known as the Great Petition⁴ and subsequently to the enlistment strike. Finns’ active and passive resistance continued throughout the first period of oppression, until Russia, weakened by its war with Japan, agreed

![Image of the November Manifesto of 1905](image_url)

The November Manifesto of 1905 with the headline “The Manifesto of His Imperial Majesty regarding measures for the restoration of lawful order in the country”. The National Library of Finland.
to abolish the February Manifesto in order to see an end to the general strike of 1905. Tsar Nicholas II issued the radical November Manifesto, in which he promised to convene the estates Diet ‘for the development of the Finnish people’s statutory rights as laid down in the fundamental laws’. Pre-censorship ceased, and the following year the Diet passed the ‘Civil Rights Act regarding freedom of expression, assembly and association’. Parallel with this legislation, the Diet reform was carried out by instituting the 1906 Diet Act as a law with constitutional status. It replaced the estates Diet with a single-chamber assembly which was very progressive for its time – in the general elections in 1907, women were not only eligible to vote but could also, for the first time in any country, be elected.

Despite the significant constitutional reforms, protection of freedom of expression remained shaky. Even if the Tsar had ratified the Civil Rights Act on citizens’ rights, he did not ratify the ordinary laws on press freedom and freedom of assembly that had been drawn up with reference to it. The second ‘period of oppression’ began in 1908, and would continue until the Russian revolution and Finland’s independence (1917). It was characterised by a renewed tightening of Russia’s grip on Finland, its legislation and civil rights. Pre-censorship was imposed once again on the strength of administrative statutes.

**Between the world wars**

After Finland had become independent at the end of 1917, its Parliament managed to pass a press freedom law, but the civil war between ‘Reds’ and ‘Whites’ in 1918 left parliament incomplete since the socialists were either dead, in exile or in jail. Not long after the end of the civil war, the incomplete Parliament passed a law on the issuing of interim statutes for the preservation of public order and safety, which restricted freedom of the press, of assembly and association. It was followed by a raft of stringent restrictions, including the possibility of suppressing newspapers by means of administrative regulations. Germany’s defeat in the First World War altered political alignments in Finland to favour a republican form of government, and the Instrument of Government for Finland that was instituted after parliamentary elections in 1919 included regulations on freedom of expression that were similar to those in the 1905 Civil Rights Act.

Protection of freedom of expression in Finland was shaky throughout the interwar period. There were repeated cases of newspaper confiscations and suppression in the 1920s, and in 1930 the Communist Laws came into force, in which Parliament had given in to the right-wing Lapua movement’s
Edvard Isto’s painting Anfall (The Attack) became a symbol of the Russification of Finland. In the painting, from 1899, the Russian double eagle attempts to tear the book of laws out of the hands of the Finnish maiden. The Finland National Board of Antiquities.
lobbying, which had already led to administrative measures to prevent the printing of communist newspapers. The Ministry of Justice – that is, a government department and not a court of law – was authorised to suspend print products temporarily, and the police were given extensive powers of confiscation. One event that was important in itself as well as heralding better times for constitutional protection was when the Parliament Constitutional Law Committee, in connection with the reading of the Sedition Act in Parliament in 1934, adopted a series of relaxations of the law in order to protect the fundamental rights and freedoms enshrined in the Constitution. This was a step that was very significant, in terms of principle, for its time, because it was only after the Second World War that constitutional protection of property – and from 1971 onwards regulations regarding other fundamental rights as well – began to exert a real influence on legislation, thanks to the actions of the Parliament Constitutional Law Committee.

Section 10 of the 1919 Instrument of Government for Finland guarantees Finnish citizens ‘freedom of the word and of the right to publish in print a written or pictorial representation without any obstacle to this being raised beforehand’. The tradition stretching back to the 1766 Freedom of the Press Act, as well as experiences during the Russian era, can be seen as reflected in this constitutional instrument, where the proscription against administrative pre-censorship is highlighted as the core element of freedom of expression. No one except the country’s own citizens was promised freedom of expression – nor any other fundamental rights.

In keeping with the general view of the Constitution at the time, this was a weak fundamental right in the sense that the second part of regulation contained a general proviso: ‘Statutes concerning the exercise of these rights shall be issued in law.’ Thus, pre-censorship was banned at the constitutional level, but it was left to Parliament to regulate the substance, protection and limits of freedom of expression by means of ordinary law.

From exceptive laws to a new constitutional concept
Not even during the decades after the Second World War were the constitutional regulations regarding the protection of freedom of expression and other fundamental rights taken very seriously in Finland. Parliament’s Constitutional Law Committee did check that draft legislation was constitutional, but most attention was directed towards legislation concerning the economy and working life, as these areas were often seen as a threat to the private property rights as enshrined in the Constitution. For a succession of broadly-based coalition governments, however, the solution was
Constitutional protection for freedom of expression

often to cobble together the necessary qualified majority in order that a law regarded as necessary could be passed as an exceptive measure, thus sidestepping the Constitution. Exceptional laws were also passed in relation to constitutional provisions other than property protection, and in Paavo Kastari's memorable phrase the Finnish constitutional concept could be characterised as 'rigidly flexible': the Constitution was seen as binding on a formal level, and was narrowly interpreted, but in practice legislators had considerable leeway in passing laws to their own taste, unimpeded by the Constitution, as long as they could muster broad political support.

Reference has already been made above to the 1934 Sedition Act as a harbinger of a system in which ex-ante verification of the constitutionality of legislation was concentrated to the Parliament Constitutional Law Committee. After the Second World War the Committee's position was strengthened, at first on issues concerning the regulation of the economy and later more generally on issues covered by the list of fundamental rights and freedoms in the 1919 Instrument of Government for Finland. The Constitutional Law Committee's 1971 opinion on security checks at airfields, in particular, has been regarded as significant for the expansion and increased efficiency of the protection of fundamental rights during the legislative phase. However, this protection was markedly formal since it primarily influenced the reading procedure for proposed bills, a sufficient statutory majority being the requirement for pushing through draft legislation that was regarded as deviating from the Constitution.

The next important new impulse for the Finnish outlook on fundamental rights came from international conventions on human rights. The United Nations' covenants on economic, social and cultural rights (ICE-SCR) on the one hand, and on civil and political rights (ICCPR) on the other, came into force internationally and became binding for Finland in 1976. The latter also became part of domestic law by means of the adoption of a law on the incorporation of the covenant. In connection with draft legislation concerning religious teaching and guidance in schools and day care centres, in 1982 the Parliament Constitutional Law Committee made its assessment – for the first time – in the light not just of the Finnish constitution but also of the ICCPR, stating that even if a statutory majority could legitimize exceptions to Finland's own Constitution, this did not confer the right to deviate from the letter of international human rights conventions which are binding on Finland.

Finland entered into what could be called the era of the human rights conventions, and at the same time protection of fundamental rights (or human rights) shifted from being formal to being substantive in that instead of passing an exceptive law that deviated from the Constitution, it became...
increasingly common to decide to alter the Government Bill in the manner indicated by the Constitutional Law Committee, in order to achieve harmony with the Constitution and the human rights conventions.\textsuperscript{15}

In 1990 Finland became a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In 1995, following extensive preparations, the constitutional reform of fundamental rights was completed, in which the core ideas were to modernise the national list of fundamental rights and freedoms in the light of international human rights conventions, to make fundamental rights and freedoms directly applicable in court, and to do away with the old procedure involving exceptive laws.\textsuperscript{16} The new fundamental rights provisions were first introduced as a comprehensive reform of Chapter II of the 1919 Instrument of Government, and were then, in 1999, transferred to Finland’s new Constitution which came into force on 1 March 2000.\textsuperscript{17}

Freedom of expression was of course included in the list of fundamental rights, now as Section 12, whose Item 1 guarantees freedom of expression and of the press, while Item 2 – rooted in the 1766 Freedom of the Press Act – guarantees the Principle of Public Access to Official Documents from public authorities. After extensive deliberation, Finland decided that the question of permissible limitations of fundamental rights would be determined, to a considerable degree, on the basis of general doctrine about fundamental rights and freedoms\textsuperscript{18}, such that Section 12 in the Constitution, for example, did not include any comprehensive clause regarding permissible limitations to freedom of expression. The provision contains a clause, which is interpreted in the light of the general circumstances for limiting fundamental rights, as well as special permission to provide for restrictions regarding pictorial programmes in order to protect children.\textsuperscript{19}

Section 12 of the Constitution reads in its entirety:

\textit{Section 12 – Freedom of expression and right of access to information}

Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act. Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.
Freedom of expression and counter-terrorism measures

The relationship between freedom of expression and fighting terrorism is very sensitive. In situations where the terrorist threat is felt to be considerable, states or individual authorities responsible for security often consider it necessary to restrict freedom of expression. The justifications for this range from a need to criminalise incitement to violence to the idea that terrorists and their supporters have to be prevented from using the public arena.

However, freedom of expression – in particular when exercised by the media – is also a very important channel for public criticism of both terrorist and government propaganda, and for providing reliable information about conflicts and the reasons for them. The general comment by the UN Human Rights Committee on freedom of expression indicates this tension. It emphasises that measures against terrorism must respect the conditions for permissible restrictions upon freedom of expression as laid down in Article 19, Paragraph 3 of the ICCPR. The Committee also emphasises in the general comment that eventual crimes regarding ‘glorifying’ or ‘justifying’ terrorism should be clearly defined so that they do not lead to unnecessary or disproportionate interference with freedom of expression.

This section looks at the relationship between freedom of expression and counter-terrorism measures primarily in the light of universal human rights, i.e. the United Nations’ human rights norms, partly on the basis of the author’s experiences first as a member of the above-mentioned Committee (the Human Rights Committee) in 1997–2004, and then in 2005–2011 as Special Rapporteur of the United Nations Human Rights Council on the protection and promotion of human rights and fundamental freedoms in the fight against terrorism. For the sake of comparison, the text also refers to European documents on counter-terrorism and to the UN Security Council’s activities against terrorism.

Legal norms

At the universal level, press freedom is protected as a part of freedom of expression. The most important human rights provision that concerns it is in the International Covenant on Civil and Political Rights from 1996 (ICCPR), whose Article 19 guarantees freedom of expression and furthermore defines, in paragraph 3, under what circumstances restrictions on freedom of expression can be accepted. As far as counter-terrorism measures are concerned, it is noteworthy that both national security and public order
(ordre public) are mentioned as legitimate aims justifying restrictions, if all other conditions are fulfilled. Thus counter-terrorism measures that interfere with freedom of expression may be permissible – but not only on the grounds of their legitimate aim. They must also be ‘provided by law’ and be ‘necessary’ – in other words, both effective for achieving their legitimate aim and proportional to the achieved benefit.

It is also noteworthy that in addition to article 19, paragraph 3, the ICCPR also contains certain other provisions that may be cited to justify counter-terrorism measures which restrict freedom of expression. Article 4 states the possibility of temporarily deviating (‘derogating’) from several human rights, including freedom of expression, when ‘the life of the nation’ is threatened by a public emergency and the state has officially proclaimed that such an emergency exists. Article 5 of the ICCPR renounces any right for anyone to engage in any activity or perform any act aimed at the destruction of human rights. Further, Article 20 does not merely allow but in fact obliges states parties, in a way that is exceptional for human rights conventions, to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Even if all of these provisions have potential significance when assessing the interrelationship between freedom of expression and counter-terrorism, states have not in practice sought recourse to the emergency proclamation offered by Article 4 in order to justify deviations from freedom of expression in the fight against terrorism, and the UN Human Rights Committee has been very restrictive in referring to Article 5 or 20 in the assessment of states parties’ obligations under the covenant, and their fulfilment. It can justifiably be stated that in practice, Article 19, Paragraph 3 of ICCPR has been the standard by which counter-terrorism measures have been assessed when they have implied restrictions on freedom of expression.

With the exception of Article 20 of the ICCPR, which is without parallel among human rights conventions, the above also applies to the European Convention on Human Rights from 1950 in its current amended wording and with additional protocols. At the European level, however, various legal documents have been drawn up after September 2001 with reactions to expressions that are regarded as promoting terrorism in one way or another. In the same manner as in Article 20 of the ICCPR, the basic premise is to criminalise incitement, but there are also other important nuances related to this.

In 2005 the Council of Europe adopted a Convention on the Prevention of Terrorism that enjoins states parties to criminalise any public provocation to commit a terrorist crime (Article 5), recruitment for terrorism
(Article 6) and training for terrorism (Article 7). Of these the first is particularly significant in the present context, since it binds states parties to criminalise (as public provocation to commit a terrorist crime) the distribution, or otherwise making available, of a message to the public ‘with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed’. The wording is a compromise between the views of various European states, and its clarity and precision therefore do not meet the level of quality that ought to be required of the criminalisation of expression.

When the convention was being drawn up in 2005, some member states were applying extensive criminalisation of e.g. the glorification or apology of terrorism, while others did not even criminalise direct incitement to terrorism. Article 5 literally requires that it be a matter of incitement to terrorism, since the paragraph assumes both a subjective intent to incite someone else to carry out a terrorist crime, as well as an objective danger that this someone, as a result of the incitement, actually commits a terrorist crime.

Thus, even if the paragraph essentially abides by the strict legality requirement of criminal law, its application is obscured by the clause ‘whether or not directly advocating terrorist offences’. Because of that clause it is quite possible that some states parties, with reference to the Convention in their national laws attempt to criminalise acts that do not in themselves involve any actual incitement to crime, for which reason such laws can constitute a threat to freedom of expression. It is in keeping with the legality requirement in criminal law to interpret the paragraph such that ‘indirect’ incitement refers to the use of symbolic communication as a form of intentional incitement to terrorism. It thus becomes a matter of taking into account the multitude of forms of communication without lowering the level of the intentionality requirement.

Despite its somewhat problematic wording, Article 5 of the Convention was copied verbatim to the EU’s framework decision against terrorism when this was amended in 2008. Thus the most important legal document on counter-terrorism of the Council of Europe and the European Union has adopted the same line of reasoning when it comes to criminalising incitement to terrorism, even though this line is somewhat blurred. At the diplomatic level this may be a question of constructive ambiguity in connection with the negotiation process, but in dealing with such an important matter as defining the criminal limits of freedom of expression in communications regarding terrorism, a more precise common European standard would seem to be called for.
The vagueness of the chosen wording is reflected in the Council of Europe’s central working paper in preparation for the Convention, in which it at least appears to expand the item’s area of application – in a way which is problematic considering the legality requirement in criminal law – beyond the wording to include acts other than intentional incitement to a terrorist crime:

95 When drafting this provision, the CODEXTER bore in mind the opinions of the Parliamentary Assembly (Opinion No. 255 (2005), paragraph 3.vii and following), and of the Commissioner for Human Rights of the Council of Europe (document BcommDH (2005) 1, paragraph 30 in fine) which suggested that such a provision could cover ‘the dissemination of messages praising the perpetrator of an attack, the denigration of victims, calls for funding for terrorist organisations or other similar behaviour’ which could constitute indirect provocation to terrorist violence.26

It is questionable whether this statement in the official background memorandum adopted by the states parties is actually in concordance with Article 5, since the article contains the double requirement for subjective intent to incite others to commit terrorist crimes and for objective danger that someone as a result of this will actually commit a terrorist crime.

This double requirement was duly included in Paragraphs 99 and 100 of the explanatory memorandum, but the above-quoted Paragraph 95 appears to contradict them. It may of course be the case that this gives such ‘indirect’ advocacy as Article 5 of the Convention refers to its own import, independently of the actual incitement to crime. In the Convention text, however, the indirectness of the incitement is linked only to the objective dimension of the act – that the recipient of the message is provoked to commit a crime – and does not in the least lessen the subjective requirement that it is actually the sender’s premeditated intention to incite terrorist crimes.

At the time of writing, preparations are underway to replace the EU Framework Decision against Terrorism with a new directive. The European Council’s proposal – evidently following pressure by Spain, France and the United Kingdom – includes changing the provision on incitement to terrorism in order to give it a more open and vague form than before, with ‘glorification’ of terrorist acts being mentioned as a potential sub-species of indirect incitement.27

It is noteworthy that the United Nations has been more cautious than European actors when it comes to prohibiting incitement to terrorism, perhaps due to the strict American conception of freedom of expression. Among the many conventions against terrorism that have been drawn up at the UN level28 there is, for example, a convention on combating the
financing of terrorism, but no convention that prohibits incitement to terrorism. UN Security Council Resolution 1624 (2005) recognises incitement to terrorism as an issue requiring the world body’s attention, and urges all member states to ‘prohibit by law incitement to commit a terrorist act or acts’.

It should be pointed out, however, that this resolution is not among the legally binding measures against terrorism that the Security Council has adopted under Chapter VII of the UN Charter. Instead of using this forceful method, the Security Council limited itself to adopting a resolution in the nature of a recommendation, by means of which the Security Council Counter-terrorism Committee was given the new task of monitoring, via member states’ reports, their measures to implement Resolution 1624, i.e. prohibiting incitement to terrorism.

It is nevertheless significant that the Security Council resolution is based on the requirement of actual incitement, and that the preamble reinforces the importance of freedom of expression and of the exhaustive nature of Article 19, Paragraph 3 in the ICCPR with regard to permissible restrictions upon freedom of expression.

Freedom of expression in the UN Human Rights Committee: the case of Faurisson v France

Although the case did not concern incitement to terrorism, the opinion that the UN Human Rights Committee issued in the case of Robert Faurisson v France illustrates the Committee’s attitude to restrictions on freedom of expression. Faurisson, a former professor, had publicly denied that gas chambers had been used to kill Jews in Auschwitz and in other Nazi concentration camps. The French Gayssot Act from 1990 led to his being convicted of denial of crimes against humanity (contestation de crimes contre l’humanité). The Committee determined to consider Faurisson’s complaint under Article 19 on Freedom of expression in the ICCPR. It did not follow the state party’s recommendation, under the prohibition of the abuse of rights (Article 5) or as incitement to hatred or violence (Article 20), not to admit the complaint, instead deciding to examine Faurisson’s sentence with regard to Article 19, Paragraph 3, about permissible restrictions to freedom of expression.

Although the Human Rights Committee apparently was not completely convinced of the appropriateness of the Gayssot Act, it still decided to regard the law, ‘as applied by the French courts in the complainant’s case’ as being in keeping with the ICCPR and that the restriction on freedom of expression that followed from the law was duly regulated in national legis-
The Committee next assessed whether the complainant’s criminal conviction served a legitimate aim. It found that Faurisson’s statements, despite appearing to concern historical facts such as the use of poison gases in Nazi concentration camps, were nonetheless of such a nature that, when read in their full context, they constituted an incitement to anti-Semitic sentiment. Intervening against them with criminal justice methods therefore served to protect other individuals’ rights, which amounts to a legitimate aim. Finally, the Human Rights Committee considered that the restriction on freedom of expression imposed was also necessary, since the French government was convinced that denial of the genocide of Jews was the most important manifestation of modern anti-Semitism in France.

The significance of the Faurisson Case for the interrelationship between freedom of expression and incitement to terrorism is twofold. On the one hand the UN Human Rights Committee provided justified protection to freedom of expression when it admitted the complaint for consideration, and assessed it with regard to the circumstances for permissible restrictions to freedom of expression in Article 19 of the ICCPR, instead of dismissing the complaint with reference to Article 5 or 20. On the other hand the case shows that it is possible, in the interpretation of human rights conventions, also to admit for due consideration symbolic communication and veiled expressions, by placing such communication in its concrete context. Irrespective of whether it is a question of permissible restrictions on freedom of expression generally, or of special provisions on the incitement to terrorism, it is not merely the verbal expressions actually used in the communication that matter, but also the intentions behind them and the effects that these messages may have on other people. This conclusion is significant as we now return to Article 5 of the Council of Europe Convention on the Prevention of Terrorism and its possibly problematic or flawed wording.

The ECHR’s ruling in Leroy v France

On 11 September 2001, the French cartoonist Denis Leroy drew a picture of the terrorist attack on the World Trade Center twin towers in New York. He had the drawing published in a Basque-language weekly newspaper, Ekaitza, which was printed in France. In the drawing, published two days after the event, we recognise the burning twin towers, and underneath is a caption parodying an advertising slogan from Sony: ‘We have all dreamt of it – Hamas did it.’ The cartoonist was convicted in France for condoning terrorism (complicité d’apologie du terrorisme), after which he lodged a complaint with the ECHR for violation of his freedom of expression.
Freedom of expression, guaranteed in Article 10 of the European Convention, has traditionally enjoyed strong protection in the Court’s application of the ECHR. As described in a later section of this paper, Finland, for example, has experienced considerable difficulties with the freedom of expression article, and the ECHR has symptomatically frequently established human rights violations precisely on the basis of that article – despite Finland’s reputation as a model state for human rights, including freedom of expression. Against this background it is surprising that the ECHR in the Leroy case accepted the French court’s opinion and did not find that the cartoonist’s conviction had violated freedom of expression.

It is justified to claim that in the aftermath of the terrorist attacks in September 2001, the ECHR deviated from its generally rigorous approach. Instead of applying its own established line of interpretation, according to which only direct incitement to crime justifies criminalising freedom of expression, the ECHR found that France had not violated freedom of expression. Nowhere in the judgement does the Court adduce that Leroy’s cartoon was intended to incite violence or terrorism. Instead of making that assessment, the ECHR characterised the cartoonist’s activities in a way that strikes a discordant note with the Court’s earlier practice: ‘by the language that the applicant chose to use, he expressed his approval of violence directed at thousands of civilians and deprecated the victims’ human dignity’.

Its reference to the human dignity of the victims shows how the ECHR deviated from incitement to crime as the correct criterion for criminal law sanctions against the exercise of freedom of expression. Bearing in mind the above discussion of European and international legal instruments against terrorism, it is significant that the ECHR in proceeding as described referred to the Council of Europe Convention on the Prevention of Terrorism and emphasised that with regard to public incitement to terrorism – which the countries are expected to criminalise in Article 5 – it had not been critical per se whether or not the incitement had led to someone actually committing a new terrorist crime.

This interpretation of the Convention is correct in and of itself, but at the same time the ECHR declined to apply the subjective requirement that Article 5 also contains, and which states that the person conveying the message has the premeditated intention of inciting others to commit terrorist crimes, as well as the same item’s objective requirement that it can be shown that there is a danger that some other person may commit a terrorist crime as a result of this incitement.

It thus seems as if the ECHR, in deviating in its Leroy decision from its own established standard with respect to incitement to crime, referred
in ostensible justification of this to the European Convention on the Prevention of Terrorism from 2005, despite misconstruing, consciously or without noticing, the actual substance of the Convention. It is tempting to conclude that the political understanding between the Council of Europe’s member states on the need to criminalise public incitement to terrorist crimes – which was given the form of an unclear compromise in the text of the convention – made it possible for the ECHR to deviate from the earlier incitement criterion and adopt a more permissive stance towards criminalisation of the exercise of freedom of expression. This means that states parties are given greater freedom than before to criminalise any expression at all which, in one way or another, is positive towards terrorism.

It is my opinion that the cartoonist whose drawing was published in Ekaitza acted in very bad taste, and that instead of bringing charges for a crime, the paper’s readers should have been given the opportunity to act as arbiters of taste and assess the matter.

Conclusions about freedom of expression and incitement to terrorism

The legal cases and other points discussed above give rise to two conclusions. First, the clauses about permissible restrictions included in human rights treaty provisions on freedom of expression, such as Article 19, Paragraph 3 in the ICCPR, provide a good frame of reference for assessing the necessity of restricting freedom of expression in order to combat terrorism. It is necessary for states in their national laws to prescribe appropriate legal grounds for any restrictions on freedom of expression for the purpose of combating terrorism. In applying these provisions, states must further ensure that the methods used are necessary in order to achieve a legitimate aim, e.g. to prevent or investigate serious crimes.

Second, when an analysis of acceptable circumstances in which to restrict freedom of expression indicates that criminal justice methods are necessary to prevent propaganda that promotes terrorism, incitement to terrorist crimes is the correct yardstick for drawing the limit. Despite the considerable popularity that expressions such as ‘glorification’ or ‘apology’ of/for terrorism have gained in certain large and influential member states of the European Union, they are too broad and imply the risk of violations of freedom of expression.

Between 2005 and 2011, I served as special rapporteur on human rights and counter-terrorism for the UN Human Rights Council. In my final report to the council I presented, on the basis of my six years in office, a
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ten-point compilation of best practice counter-terrorism measures that are effective in the fight against terrorism while at the same time respecting human rights.42

One of the ten best practic measures was the following model formulation for describing incitement to terrorist crimes, intended to be incorporated into national legislation:

It is an offence to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed.43

As explained in the UN report, this wording follows, almost verbatim, the wording in Article 5 of the Council of Europe Convention on the Prevention of Terrorism, which thus provides material for ‘best practice’. It should be noted, however, that the Convention’s problematic way of linking, in its wording, indirect acts to the yardstick for incitement, has been avoided by using the word ‘expressly’ instead of the word ‘directly’. It follows from this change that it is not possible to interpret the clause in a way that justifies waiving the requirement for incitement to crime. In the special rapporteur’s report I referred expressly to the ECHR’s ruling in the case of Leroy v France as proof of the need to clarify the wording of the phrase compared with the Council of Europe Convention.44 The wording I suggest covers communications in which the sender uses veiled formulations or metaphorical expressions as a means of spreading messages which are an incitement to terrorism. Yet it does not entitle the waiving of the requirement that the prosecutor prove both the indicted perpetrator’s subjective intent to incite terrorism and the objective danger that someone else will commit a terrorist crime under the influence of this incitement.

The ECHR and freedom of expression in Finland

The period before joining the European Convention

The legal frame of reference in this section of the chapter is primarily the European Convention on Human Rights (the European Convention), as we turn our attention specifically to Finland and to the international assessment of the freedom of expression situation there. Finland only joined the Council of Europe in 1989, a mere six months before the fall of the Berlin wall and other political upheavals in Eastern Europe. Until that time, Fin-
land’s participation in this decidedly western European organisation had been as an observer rather than as a full member and was part of its special strategy of keeping out of conflicts between the superpowers. Finland had nonetheless already committed itself, at the level of international law, to freedom of expression as a human right, above all by acceding to the UN International Covenant on Civil and Political Rights (ICCPR) of 1966, and its optional protocol that allows applications from individuals. Before Finland’s accession to the European Convention, international human rights were a minority interest in the country and its courts, for example, paid very little attention to them.45

One of the most important freedom of expression decisions by the Human Rights Committee, which monitors observance of the ICCPR, nevertheless concerns Finland. The case of 

Hertzberg et al v Finland46 was about complaints from private individuals regarding the programming policy of the state-run Finnish Broadcasting Company, which was based on the incitement ban47 and which had led to radio and TV programmes avoiding issues to do with homosexuality. A group of journalists at the Finnish Broadcasting Company and individuals they had interviewed for their programmes (including Leo Hertzberg, a practicing lawyer) complained to the Human Rights Committee that the editor of a radio programme in one instance had been prosecuted for a crime, and that the FBC’s management and programming policy in other instances had prevented them from exercising their freedom of expression because the company had been unwilling to broadcast radio or TV programmes that dealt with homosexuality.

According to the Committee’s decision, the people who had been interviewed for the programmes had not been entitled under freedom of expression to have their interviews published, and the indictment against the journalist who had interviewed Hertzberg had not affected the interviewee’s freedom of expression. However, the Committee’s view was that freedom of expression had been restricted for the journalists whose programmes had not been broadcast, but that this was a permissible restriction with respect to the ICCPR. In its reply, the Finnish Government cited the fact that Article 19 of the ICCPR allowed for a restriction of freedom of expression ‘for the protection of morals’. The Committee accepted this argument as there was no universally applicable common standard on moral issues and national authorities should therefore be accorded ‘a certain margin of discretion’.48

It is apparent that the case was difficult for the Human Rights Committee. It has gone down in history as the only decision in which the Committee cites the national authorities’ margin of discretion as grounds for
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granting or rejecting a complainant. It is interesting that the Committee later chose another case against Finland as an opportunity to state that it does not apply the doctrine of the state party’s margin of appreciation in the assessment of whether the ICCPR has been violated. Even if the doctrine of the state’s margin of appreciation is one of the ECHR’s established interpretation principles – as a result of the original western European convention parties’ shared values and mutual trust – it has not been adopted in the application of universal human rights treaties, as the competent monitoring bodies have focused on primarily emphasising that human rights are universal.

The 25 ECHR freedom of expression rulings that concern Finland

When Finland joined the Council of Europe and adopted the European Convention in 1989-90, a series of legislative changes were made whose aim was to harmonise national legislation with their obligations under the Convention. The work that this entailed was much more thorough than when Sweden and the other Nordic countries acceded to the European Convention in the 1950s, with eyes virtually covered and simply assuming that national legislation was entirely in harmony with the Convention. An important area of legislative change in Finland was where political human rights were extended to cover foreigners who were resident in Finland, alongside the country’s own citizens.

Finland became a party to the European Convention on 10 May 1990. It has subsequently come as a surprise that freedom of expression – Article 10 of the European Convention – has often led the ECHR to deliver rulings against Finland. As of the end of 2015, the ECHR has processed a large number of applications against Finland regarding Article 10, of which a considerable share have not been admissible, as is customary. However, as many as 25 cases have led to rulings on merits, and in only six of these the Court has found no violation of Article 10. In other words, the ECHR has found that Finland violated freedom of expression in as many as 19 cases. These rulings have been based on applications to the ECHR between 1996 and 2013, and have generally been preceded by a long legal process in Finland. Since 2002 Finland has received rulings against it almost every year, with at most eight such rulings being delivered in a single year. That particular year, 2010, appears to be a turning point in that it also saw the first ruling on freedom of expression that did not go against Finland (Ruokanen) after an unbroken series of twelve rulings the other way. Of the most
recent cases, initiated in 2010 or later, the ECHR has found against Finland in only one (Niskasaari and Otavamedia), while the other five rulings in the 2010s have been in Finland’s favour. It thus seems that Finland, in the ECHR’s view, finally found the right balance between protecting freedom of expression and protecting competing interests in 2010 – twenty years after its accession to the European Convention.

But the matter requires a more thorough analysis. The table below contains basic information about the 25 ECHR rulings: the name of the applicant, the number of the application (which also specifies the year in which the case was submitted), the date of the ECHR judgement and the outcome of the case with regard to Article 10 (violation/no violation of the European Convention).

The first observation with respect to the ECHR freedom of expression rulings concerning Finland is that applicants have often been professional journalists, including well-known ones (Susanna Reinboth, Tapani Ruokanen, Pekka Karhuvaara) at major media organisations (Helsingin Sanomat, the Finnish Broadcasting Company, Ilta-Sanomat, Ilta-lehti, Suomen Kuvalehti). At a minimum, rulings 2, 9, 11, 16, 17, 19, 22 and 25 belong in this category. There must be something wrong with the Finnish state’s attitude to the way the established media exercise freedom of expression and of the press, as criminal proceedings and sanctions against top journalists have led to so many complaints to the ECHR.

Another notable circumstance is that the ECHR has often delivered rulings against Finland in cases in which the media have published embarrassing information or claims about a public person, e.g. the former national Labour Dispute Conciliator (riksförlikningsman), in cases 8–12. In such cases, it may be expected that the ECHR would consider that freedom of expression, due to the public interest attached to the matter, also applies for the publication of such embarrassing circumstances as would be covered by protection of privacy if the matter concerned an ordinary citizen. Consequently, criminal law or otherwise severe sanctions directed against journalists or media in these cases violate the principle of proportionality related to permissible restrictions on freedom of expression.

This hypothesis appears to be confirmed by the first ECHR ruling which did not go against Finland (Ruokanen, case 13). The case was decided on the same day (6 April 2010) as the five previously mentioned rulings were delivered. In it a journalist – the editor-in-chief and publisher of an established magazine (Suomen Kuvalehti) had been sentenced to criminal law sanctions and damages because the magazine had published an article about the victory celebrations of a named pesäpallo (Finnish baseball) team that ended with the gang rape of a young woman. The athletes had
not been individually named, but in their home town, at least, they were known and could be identified due to the team’s considerable popularity. Still, compared with an important decision-maker at the national level (the national Labour Dispute Conciliator), they were only ordinary people. The ECHR considered that the criminal law fine which had been imposed and the damages of EUR 4,000–5,000 awarded to each player had not been a disproportionate sanction for exercising freedom of expression in a way that violated the athletes’ statutory presumption of innocence.

However, there are two reasons to regard the Ruokanen Case as an anomaly among the ECHR rulings. The first is that the judgment was the result of a 5–2 vote among the judges, with the chamber’s British Chair, Nicolas Bratza (subsequently President of the ECHR), and an Albanian judge, Ledi Bianku, considering that the sanctions imposed had violated the principle of proportionality. And the second is that it appears to be the case that the distinction between favourable and unfavourable rulings in ECHR practice has not – or at least not consistently – been based on whether the person who suffers embarrassing publicity is a public person or an ordinary citizen. Rulings 16 and 17 found that freedom of expression had been violated as negative publicity had befallen a public person. But on the other hand, the outcome was the same in ruling 18, in which the object of the publicity was a perfectly ordinary citizen, while in cases 20–21 the court did not find against Finland – despite the fact that the embarrassing publicity had been suffered by the Prime Minister, and that those who had written about him were sentenced to criminal law fines.

On these grounds, it would seem justified to consider that the first ruling in Finland’s favour (Ruokanen, no. 13) indeed was an anomaly, and that the real turning point occurred only about four years later on 14 January 2014, when the ECHR published its rulings in cases 20 and 21. After that date only one ruling against Finland has been delivered, no. 23 (Niskasaari and Otavamedia), while all other applications regarding violations of freedom of expression have been dismissed by the ECHR.

Rulings nos. 20 (Ruusunen) and 21 (Ojala and Etukeno Oy) concerned the same matter – a book about the beginning, course and end of an intimate relationship which was based on the account of Prime Minister Matti Vanhanen’s former female companion. The book contained detailed descriptions of an important public person’s private life and could be embarrassing for him. The applicants had been sentenced to fines or to pay damages in Finland. Even though criminal law fines were included in the sanctions, the ECHR found that the Finnish courts had weighed the relationship between protection of privacy and freedom of expression correctly, and the sanctions imposed had therefore not infringed the principle of
proportionality. When we try to find an explanation for why the ECHR did not find that Finland had violated freedom of expression even though it had found that this was the case on 18 earlier occasions, there is reason to direct our attention towards two circumstances.

On the one hand, the matter had gone all the way to the Supreme Court at the national level, and the Supreme Court had held oral hearings and delivered a ruling in which the criminal law fine had been confirmed while other sanctions had been mitigated. The Supreme Court’s ruling (KKO:2010:39) included an extensive statement of reasons which discussed matters such as how the Prime Minister’s position in society affects the scope of protection of his private life in relation to freedom of expression, and specified in detail (Item 46), page by page and line by line, what parts of the book were censurable under criminal law. The Supreme Court expressly referred to the ECHR rulings in its statement of reasons (Items 28, 32, 35, 36).

In the Ruusunen ruling (Item 51) the ECHR found that the national courts, by referring to the ECHR practice, had tried to find a balance between the protection of privacy and freedom of expression, in accordance with the principle of proportionality. According to the ECHR, the Su-
preme Court had convincingly – and with consideration paid to ECHR case law – justified the restrictions on freedom of expression which had been imposed on the applicant (Item 52).

On the other hand it is noteworthy that the ECHR in these rulings, nos. 20 and 21, used an argument that could also have been used in several earlier cases, which is that although a fine is a criminal law sanction in Finland, it is not registered on the offender’s criminal record. This circumstance appears to have been an equally important argument for the ECHR (Item 53 of the judgment) as the Supreme Court’s extensive statement of reason.

This last circumstance is also the third significant aspect for a general assessment of the entire sequence of ECHR freedom of expression rulings that concern Finland. Prior to the Ruusunen Ruling, the ECHR had often based its reasons for rulings against Finland on the fact that a fine is a criminal law sanction, which in principle is disproportionate to the matter having been one of the exercise of freedom expression. In Case nos. 20 and 21 the ECHR differentiates for the first time between fines and other criminal law sanctions, on the grounds that fines are not registered on an individual’s criminal record. This line of reasoning has since been applied, in expanded form, in all rulings that do not find against Finland: in the Salumäki case (no. 22) the ECHR repeated the argument as such; in the Satakunnan Markkinapörssin and Satamedia case (no. 24) the Court emphasised that the sanctions applied had been purely administrative and not under criminal law; and in the Pentikäinen Case (no. 25) it elected to consider that freedom of expression had not been violated as the journalist, while having been accused of a crime – refusing to comply with a police order - had not been sentenced to a sanction. The change from violations of freedom of expression to the ECHR’s ruling in favour of Finland which is expressed in the Ruusunen judgment would thus seem to be explained equally well by the Supreme Court’s thorough statement of reason in the Ruusunen Case, as by the fact that the ECHR had directed its attention to whether the matter would lead to a registration on the criminal record or not.

Above I characterised the ECHR ruling in the Ruokanen case (no. 13) as an anomaly. In the light of what has just been stated, the Niskasaari and Otavamedia ruling (no. 23) is also an anomaly, since in it the Court found – after the Ruusunen ruling – that freedom of expression had been violated in spite of the journalist, Mikko Niskasaari, having been sentenced to fines which, as noted, do not lead to a registration on the criminal record. It is noteworthy that although the ruling was delivered more than a year after the Ruusunen judgment, the matter had begun its processing in the ECHR before the Ruusunen Case. It may be that in processing it, the Finnish Government had not yet used the argument that fines do not occasion
any registration on the criminal record, since there is no reference of any kind to this issue in the Niskasaari judgment. In other words, it is possible that the case had been adjudicated in a continuum along with earlier cases, and that no consideration was paid to the change that had occurred in connection with the Ruusunen Case in 2014.

The most recent freedom of expression ruling, the ECHR ruling in the Pentikäinen case, which was published on 20 October 2015, also demands special scrutiny. My point of view, in short, is that the ECHR threw out the baby with the bathwater. The line adopted in the Ruusunen case, i.e. that registration on the criminal record is of decisive significance and the ECHR has faith in the Finnish justice system’s ability to find the right balance, was applied mechanically and without requisite attention being paid to the particular characteristics of the case. This is surprising in the sense that, unlike all earlier freedom of expression rulings concerning Finland, Pentikäinen was adjudicated by 17 judges in the Grand Chamber. They are expected to effect a more thorough examination than in those adjudications which are made in a chamber of seven judges, as is the case for most of the ECHR judgements – including all of the previous 24 freedom of expression cases concerning Finland.

Pentikäinen (Case no. 25) was decided by a vote in the ECHR, with the outcome 13-4. The Case had first been deliberated in a chamber of seven judges, who had judged by a vote of 5-2 that the applicant’s freedom of expression had not been violated. In connection with an ASEM demonstration that had been arranged in Helsinki in 2006, Suomen Kuvalehti’s photographer, Markus Pentikäinen, had been taken into custody by the police and had been deprived of his liberty for 17.5 hours. The police had ordered that the demonstration disperse and began to arrest those who did not follow their order. When Pentikäinen was arrested he had said that he was a journalist and showed his press card, which he also showed later at the police station. Yet he was only released at 15.00 the following afternoon. Pentikäinen was indicted for refusing to obey the police, and the lower court noted that he had committed a crime but did not impose any sanction. The Court of Appeal upheld the ruling of the lower court, and the Supreme Court did not grant leave to appeal in this case.

The ruling from the ECHR Grand Chamber states that registration on the criminal record follows certain criminal law sanctions (Item 53) and that other journalists had avoided deprivation of liberty and prosecution by following the police order to disperse (Item 101). Although it was noted that Pentikäinen’s act fulfilled the definition of criminal disobedience, he had not been sentenced to a penalty and had thus not suffered any negative sanctions (Item 113). For that reason the ECHR reached the position that
Table. The ECHR’s rulings on the merits concerning Finland, in the area of freedom of expression (Article 10), in chronological order according to the publication date of the judgement, until 31 December 2015.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Application number</th>
<th>Date of verdict</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Nikula</td>
<td>31611/96</td>
<td>21/03/2002</td>
<td>violation</td>
</tr>
<tr>
<td>2. Karhuvaara and Iltalehti</td>
<td>53678/00</td>
<td>16/11/2004</td>
<td>violation</td>
</tr>
<tr>
<td>3. Selistö</td>
<td>56767/00</td>
<td>16/11/2004</td>
<td>violation</td>
</tr>
<tr>
<td>4. Goussev and Marenk</td>
<td>35083/97</td>
<td>17/01/2006</td>
<td>violation</td>
</tr>
<tr>
<td>5. Soini et al</td>
<td>36404/97</td>
<td>17/01/2006</td>
<td>violation</td>
</tr>
<tr>
<td>6. Juppala</td>
<td>18620/03</td>
<td>02/12/2008</td>
<td>violation</td>
</tr>
<tr>
<td>7. Eerikäinen et al</td>
<td>3514/02</td>
<td>10/02/2009</td>
<td>violation</td>
</tr>
<tr>
<td>8. Tuomela et al</td>
<td>25711/04</td>
<td>06/04/2010</td>
<td>violation</td>
</tr>
<tr>
<td>9. Flinkkilä et al</td>
<td>25576/04</td>
<td>06/04/2010</td>
<td>violation</td>
</tr>
<tr>
<td>10. Soila</td>
<td>6806/06</td>
<td>06/04/2010</td>
<td>violation</td>
</tr>
<tr>
<td>11. Iltalehti and Karhuvaara</td>
<td>6372/06</td>
<td>06/04/2010</td>
<td>violation</td>
</tr>
<tr>
<td>12. Jokitaipale et al</td>
<td>43349/05</td>
<td>06/04/2010</td>
<td>violation</td>
</tr>
<tr>
<td>13. Ruokanen et al</td>
<td>45130/06</td>
<td>06/04/2010</td>
<td>no violation</td>
</tr>
<tr>
<td>14. Niskasaari et al</td>
<td>37520/07</td>
<td>06/07/2010</td>
<td>violation</td>
</tr>
<tr>
<td>15. Mariapori</td>
<td>37751/07</td>
<td>06/07/2010</td>
<td>violation</td>
</tr>
<tr>
<td>16. Saaristo et al</td>
<td>184/06</td>
<td>12/10/2010</td>
<td>violation</td>
</tr>
<tr>
<td>17. Reinboth et al</td>
<td>30865/08</td>
<td>25/01/2011</td>
<td>violation</td>
</tr>
<tr>
<td>18. Lahtonen</td>
<td>29576/09</td>
<td>17/01/2012</td>
<td>violation</td>
</tr>
<tr>
<td>19. Ristamäki and Korvola</td>
<td>66456/09</td>
<td>29/10/2013</td>
<td>violation</td>
</tr>
<tr>
<td>20. Ruusunen</td>
<td>73579/10</td>
<td>14/01/2014</td>
<td>no violation</td>
</tr>
<tr>
<td>21. Ojala and Etukeno Oy</td>
<td>69939/10</td>
<td>14/01/2014</td>
<td>no violation</td>
</tr>
<tr>
<td>22. Salumäki</td>
<td>23605/09</td>
<td>29/04/2014</td>
<td>no violation</td>
</tr>
<tr>
<td>23. Niskasaari and Otavamedia Oy</td>
<td>32297/10</td>
<td>23/06/2015</td>
<td>violation</td>
</tr>
<tr>
<td>24. Satakunnan Markkinapörssi Oy and Satamedia Oy</td>
<td>931/13</td>
<td>21/07/2015</td>
<td>no violation</td>
</tr>
<tr>
<td>25. Pentikäinen</td>
<td>11882/10</td>
<td>20/10/2015</td>
<td>no violation</td>
</tr>
</tbody>
</table>

the restriction on freedom of expression which had been directed at Pentikäinen had not violated the principle of proportionality, but had instead been necessary in a democratic society (Item 114).

My position is that the ECHR made a mistake by mechanically following the line that had been adopted in the Ruusunen case, and according to which, the severity of the criminal law sanctions imposed and registration on the criminal record are decisive. For this reason, the ECHR did not
pay sufficient attention to the circumstance that the police had prevented a professional journalist, who was photographing the demonstration, from continuing his work, and had subjected him to deprivation of liberty which lasted well into the following afternoon. Four of the ECHR judges – Robert Spano from Iceland, Dean Spielmann from Malta (the President of the ECHR), Paul Lemmens from Belgium and Dmitry Dedov from Russia – considered in their dissenting opinion that Finland had violated Pentikäinen’s freedom of expression, since he should have been released immediately when he showed his press card to the police.

**In conclusion: internet communication – the new challenge for freedom of expression**

_The legacy of Anders Chydenius_

Despite Anders Chydenius’s significant and early contribution to the formulation of the modern conception of freedom of expression, and despite Finland’s top position in international comparisons regarding freedom of expression, developments in the area of freedom of expression and freedom of the press have not been without problems in Finland, either. Prior to the country’s independence, the Russian authorities’ pre-censorship limited freedom of expression considerably, in particular during the periods of oppression. The period between the world wars was overshadowed by the trauma following the 1918 civil war, when the political activities of the communists and other radical left-wing groups were repeatedly repressed. Even in the 1990s and 2000s, after Finland had acceded to the European Convention, criminal proceedings against journalists and media have alarmingly often led to judgements of violation of freedom of expression by the ECHR.

The Freedom of the Press Act from 1766 was based on an important principle which is expressed in the preamble:

… In regard to which, and having received the loyal report of the Estates of the Realm on this matter, We have graciously decided that the previously established office of Censor shall be entirely abolished and that it shall not hereafter be the duty of the Chancellery to supervise, approve or disallow the texts submitted for printing, but the authors themselves shall be responsible, together with the printers, for what will appear in print, subsequent to this gracious ordinance, by which the former censorship regulations are entirely repealed; although, with regard to the importation and sale in the bookshops of harmful books, the supervision of that will remain… 

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Constitutional protection for freedom of expression

The peculiar fundamental solution in this statute, which has been elevated to constitutional rank, is to replace administrative pre-censorship with retrospective criminal liability for the author and the printer. Words and print products may move freely, but the people who are responsible for them are liable for their actions, even on the basis of the content of an expression. In print products, the author, printer, place and year of printing must be stated. One copy of each print product must be sent to the supervisory authority in order to enable supervision and retrospective sanctions. As we know from the 250-year history of the Freedom of the Press Act, these clear principles have not always been consistently applied. Still, the 1766 Freedom of the Press Act has served as a model for national constitutions and international human rights treaties, as well as when freedom of expression has been extended to new media. The notion of the author’s and publisher’s criminal law liability was appropriate for physical objects such as print products (books and newspapers), in which a requirement to publish the responsible persons’ names could be applied. It could also be extended to traditional (analogue) electronic communication (radio and television) during an era when the offering of channels was limited and channels were distributed to users via either a state monopoly or a concession procedure. Thus, the core principles in Finland’s Radio Responsibility Act are taken directly from the 1766 Freedom of the Press Act: the liability for criminal content in a radio or TV programme lies with those who should be regarded as offenders or accessories to the crime (Section 1). For each programme to be broadcast, a responsible programme editor must be appointed (Section 2).

**Freedom of expression on the internet: Delfi v Estonia**

The rapid pace of technological development has challenged this model of regulation. Digital information networks (Internet), with their complex physical infrastructure (including the possibility of sending messages wirelessly in ways other than by means of traditional radio waves), their ability to convey expressions in many different forms such as text and multimedia, and above all their supranational and company-based nature (making them independent of states) have produced a situation in which the model of criminal law liability for ‘the author’ and ‘the publisher’ under the 1766 Freedom of the Press Act no longer seems to work. Legislators can try to extend the known regulation model to network communication as well, and it is precisely this that the Finnish Act on the Exercise of Freedom of Expression in Mass Media (460/2003) strives to do. An Internet
publication must include information about the publisher and responsible editor (Sections 4 and 5), and the criminal law liability for the content of a message lies with whoever is to be regarded as offender or accessory to the crime (Section 12). The complexity of network communication, including Internet publications’ discussion forums, the non-hierarchical structure of social media (such as Facebook and Twitter), closed discussion groups and – above all – the global character of the Internet, which ignores individual state legislation, make it difficult or impossible to apply these principles derived from the 1766 Freedom of the Press Act to modern digital communication. Already the possibility of transporting a book, as a physical object, across state borders was a challenge for the regulation model of 1766, and today’s digital communication has taken that challenge to a whole new level.

At the international and European level, solutions are still being sought for liability issues connected with Internet communication. The surveillance activities that authorities carry out of the information networks in order to combat terrorism, above all, but also many other threats, are a continuing subject of discussion in international cooperation and for national legislators. These projects are quite rightly the targets of severe criticism, in particular with regard to the protection of privacy, which is guaranteed as a human and fundamental right, but also with regard to freedom of expression.53 ‘They are also the object of continuous attention by European courts54 and international monitoring bodies of human rights treaties55. No such simple and clear patent solution as the 1766 Freedom of the Press Act has been found, and it may also be that such a solution cannot be found.

It is appropriate to conclude this essay by giving an account of the ECHR ruling in the Delfi AS v Estonia case. This was a ruling by 17 judges in the Grand Chamber, so the case was one that raised serious issues of principle. It offers an interesting object of comparison with the Finnish freedom of expression cases at the ECHR which were discussed earlier, and also with the challenge, referred to above, of extending the traditional regulation models to Internet communication.

The applicant company owned Delfi, one of the biggest internet portals in Estonia. It published, among other things, news in Estonian and Russian, and its operations also extended to Lithuania and Latvia. Just as many other media that have expanded to online operations, Delfi published comments from the general public in direct connection with the news. The publishing company did not control or alter the content of these comments beforehand, so members of the public were able to publish what they wanted to say directly on the company’s server.
However, the company monitored the published comments and could, when necessary, intervene by removing texts with criminal or irrelevant content. This system was based partly on the opportunity for other readers to suggest which readers’ comments should be removed. Delfi also warned users that they themselves were responsible, including in terms of criminal law liability, for the content of their texts, and listed various types of expressions that were not permitted.\textsuperscript{56}

In the same way as has unfortunately become quite common both on established media websites and social media, the Delfi portal ended up publishing messages from readers that may have had criminal or offensive content. In January 2006, in connection with a news item about the ice roads between the Estonian mainland and the islands, a large number of readers’ comments were published, of which some were directed in an offensive or aggressive manner against the principal owner, L, of the ferry company that operated the routes to the islands.\textsuperscript{57} L brought a civil action for damages against Delfi,\textsuperscript{58} and the case went through the entire Estonian court hierarchy. The lower court considered that each writer was responsible for the content of his/her message, and not the publisher.\textsuperscript{59} The Court of Appeal considered that the lower court was mistaken and remanded the case to it.\textsuperscript{60} The lower court then regarded Delfi as the publisher of the offensive readers’ comments and ordered the company to pay the plaintiff a modest amount of compensation (EUR 320) for the injury caused.\textsuperscript{61} The Court of Appeal and the Supreme Court did not change the judgement, but both altered the statement of reasons.\textsuperscript{62}

Delfi took the case to the ECHR as an alleged violation of freedom of expression. The application was first considered by seven judges in an ordinary chamber and then in the Grand Chamber by 17 judges, who voted 15-2 in their judgement that Estonia had not violated freedom of expression. The judgement notes that the Internet has enabled unforeseen opportunities for exercising freedom of expression, and that this also brings certain risks. Since protection of privacy and freedom of expression merit equal consideration, a balance has to be found between them that guarantees the core areas of both rights.\textsuperscript{63}

ECHR considered that the Estonian authorities had found this balance, and that the damages Delfi had been ordered to pay therefore had not constituted a violation of freedom of expression. In the closing statement of reasons for the judgement, this conclusion is derived from a number of factors which may be generalised as the ECHR approach in terms of principle to the responsibility that devolves upon anyone who provides Internet services for the content of messages that a third party publishes via this service: a) the case had been considered on the merits in the national
courts right up to the Supreme Court, b) some of the readers’ comments were of an ‘extreme nature’, c) the readers’ comments had been published in connection with Delfi’s own news item which was part of a news portal that the company maintained for commercial purposes, d) the company acted promptly to remove readers’ comments that constituted threatening rhetoric or incitements to violence, and to prosecute their authors, measures that had proven insufficient, and e) the damages that Delfi had been ordered to pay were ‘moderate’. In further consideration of the margin of appreciation that is due to states parties, ECHR settled on deciding that the judgement for damages had not infringed the principle of proportionality and thus had not violated Delfi’s freedom of expression.64

It is not in any way exceptional that, even after a ruling by the Grand Chamber that is intended to constitute a line of principle for a legal problem, it remains something of a mystery which of several contributing factors may have been of decisive significance. In the light of the ECHR rulings concerning Finland and traditional media, it could be guessed that the fact that the damages the company was ordered to pay were a civil law sanction – and of a modest sum at that – played a significant role.

Perhaps the greatest merit of the Delfi ruling lies in the opinion of the two dissenting judges’. András Sajó from Hungary and Nona Tsotsoria from Georgia considered that Estonia had violated freedom of expression. Even if their dissenting opinion is, of course, not legally binding in the same way that a ruling against Estonia would have been, it nevertheless constitutes an observant warning against reaching for all too simple solutions when trying to draw boundaries for freedom of expression on the Internet. The basic ideas of their dissenting opinion can be summarised in four points:

1) Imposing strict responsibility on a party maintaining an Internet portal for comments written by the general public leads to self-censorship by the service provider and a 24/7 monitoring obligation, instead of making each writer primarily responsible for the content of their statements.66

2) The majority judgement of the ECHR was too casual in grouping together very different offensive comments without paying attention to the fact that some of them represented threatening rhetoric, racism and anti-Semitism which ought perhaps to have elicited a different attitude from the service provider and the state authorities – including criminal proceedings against the writers – than the other statements perceived as offensive.67

3) The majority judgement of the ECHR did not pay any attention to the fact that the case showed that Estonian legislation is deficient: al-
though all three courts came to the same conclusion, their statements of reason, including the legal criteria for the service provider’s responsibility for the content of readers’ comments, diverged from each another. In such circumstances, liability should not be dumped on the service provider, since ‘vaguely worded, ambiguous and therefore unforeseeable laws have a chilling effect on freedom of expression’. 68

4) It follows from the position of freedom of expression as an international human right that the right it safeguards has primacy over the obligations related to the exercise of that right. For that reason, a provider of Internet services who allows space for comments by the general public cannot have absolute (strict) responsibility for the contents of readers’ comments. 69

All of what has been written above gives cause for a general conclusion with respect to the 1766 Freedom of the Press Act: that the notion of each publisher’s and author’s liability under criminal law was a historic breakthrough which enabled the abolition of pre-censorship by the administrative authorities. More recent developments, however, have led to making this construction anachronistic. It follows from a contemporary view of human rights that sanctions under criminal law can only be used with the greatest restraint in relation to activities that constitute the exercise of freedom of expression. They may be applied when someone, in print or electronic media, intentionally incites terrorism or other violent crimes, or incites racial hatred.

In other contexts – e.g. when the exercise of freedom of expression infringes other people’s right to protection of privacy – the sanctions should be under civil law. The enduring legacy here is that the proscription of pre-censorship continues to be absolute.
Notes


2 Kastari (footnote 1) p. 181.


4 In order to have the February Manifesto abolished, more than half a million signatures were collected in eleven days. The Great Petition and the signatures are in the National Archives’ digital archive, see http://digi.narc.fi/digi/dosearch.ka?amtun=21492.KA.


6 Kejsarens Nådiga Proposition 13/1905, Författningssamlingen [the Statute Book] 38/1906. The content of the 1906 citizens’ rights law largely corresponded with Section 10 of the Instrument of Government for Finland (1919), which was instituted later, see the report by the Committee on Fundamental Rights and Freedoms, Kommittébetänkande 1992:3, p. 55.

7 Kastari (footnote 1) p. 181.

8 Ibid. p. 182.

9 Ibid. p. 183.

10 See Kastari (footnote 1) pp. 188–193.


12 See Kastari (footnote 1) pp. 194–199.

13 See the report of the Committee on the Constitution GrUU 2/1971 rd.

14 See the reports of the Committee on the Constitution GrUU 12–13/1982 rd. Another reason for these reports was one of the first human rights complaints against Finland – the case of Erkki Hartikainen v Finland, which was adjudicated in the UN Human Rights Committee in 1981, Communication No. 40/1978, Final Views by the Human Rights Committee, 9 April 1981.


16 See the report by the Committee for Fundamental Rights and Freedoms, Kommittébetänkande 1992:3.

17 Finland’s Constitution 731/1999.

18 See, in particular, the Committee on the Constitution’s report GrUB 25/1994 rd.


20 Human Rights Committee, General Comment No. 34 (UN document CCPR/C/GC/34), paragraph 46.

21 The Human Rights Committee is an independent body of experts of 18 members, instituted under the Covenant on civil and political rights.
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22 See in particular articles 10 (freedom of expression), 15 (derogation in time of emergency) and 17 (prohibition of abuse of rights).

23 Council of Europe Treaty Series No. 196. In the authentic English-language version, the crime is ‘public provocation’, which is defined as ‘the intent to incite’. As pointed out later in this article, it is also significant that where the English text uses a vague wording, ‘whether or not directly advocating terrorist offences’, the Finnish translation has opted for the equivalent of ‘regardless of whether it expressly advocates terrorist offences or not’.

24 See the ECHR’s ruling in Leroy v France, which is examined below.

25 Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism, article 3. The official Swedish translation uses ‘anstifta’ (instigate), as compared to the word ‘uppmana’ (urge, provoke) which was used in Finland in its own translation of article 5 of the Council of Europe Convention.

26 CETS 196, Explanatory Report, see the Council of Europe conventions archive http://www.conventions.coe.int/.


28 International conventions and protocols against terrorism have been grouped together at http://www.un.org/terrorism/instruments.shtml.


30 UNSC RES 1624 (2005), paragraph 1 (a).


32 Re the results of the Committee's work, see Global survey of the implementation by Member States of Security Council resolution 1624 (2005), UN document S/2012/16.

33 UNSC RES 1624 (2005), the preamble.


35 Loi no 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe.

36 Faurisson (footnote 34), paragraph 9.5.

37 Idem, paragraph 9.6.

38 Idem, paragraph 9.7. Several additional opinions from individual members of the Human Rights Committee make reference to this decision, and show that there were voices within the Committee that were critical of the Gayssot Act’s openly worded provisions, but that the Committee was nonetheless in agreement that Faurisson’s criminal conviction had not violated freedom of expression.

39 In the annual list (World Press Freedom Index) published by the organisation Reporters Without Borders, Finland was in first place, by itself or together with another country, a total of 11 times between 2002 and 2015, which is far more times than any other country. See https://index.rsf.org/#!/index-details/FIN. During the same period, the top slot was held by Iceland 8 times, Norway 7 times, Denmark 3 times and Sweden twice.

40 See Öztürk v Turkey (application 22479/93), European Court of Human Rights, Judgment of 28 September 1999; Sürek v Turkey (No. 1) (application 26682/95), European Court of Human Rights, Judgment of 8 July 1999.

Leroy v France the ECHR in fact released itself from the earlier requirement for incitement to crime and adopted a standpoint under which defence of terrorism is not covered at all by the protection of freedom of expression.


43 Idem, paragraph 32. It is worth noting that the Swedish translation (in Finland) of the Council of Europe convention (see footnote 23) already used the word ‘expressly’ and thus avoided the vagueness of the official language versions.

44 Idem, paragraph 30.


46 Leo Hertzberg et al v Finland, Communication No. 61/1979, Final Views by the Human Rights Committee, 2 April 1982.

47 Ch 20, Section 9, item 2 of the Criminal Code criminalised public provocation to ‘fornication’ between persons of the same sex. The provision was only repealed early in 1999, through act 563/1998.

48 Hertzberg, paragraph 10.3. “… public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the national authorities responsible.”

49 Ilmari Länsman et al v Finland, Communication No. 511/1992, Final Views by the Human Rights Committee, 26 October 1994. The case concerned the consequences for Sami reindeer herding of competing land use sanctioned by the state, and the Committee stated: ‘9.4 A State may understandably wish to encourage development or allow economic activity by enterprises. The scope of its freedom to do so is not to be assessed by reference to a margin of appreciation, but by reference to the obligations it has undertaken in article 27 …’


51 Ibid., 4 §.

52 The Radio Responsibility Act 219/1971 has since been superseded by the Act on Freedom of Expression in Mass Communication (460/2003).

53 In 2012–2015 I led the Commission-financed research project SURVEILLE (Surveillance: Ethical Issues, Legal Limitations and Efficiency), which used an interdisciplinary approach to look at different observation methods and technologies to combat crime, with regard to their security benefit, cost effectiveness, ethical issues and impact on fundamental rights. See http://www.surveille.eu.

54 See European Court of Justice rulings C-293/12, C-594/12 Digital Rights Ireland and Seitlinger and Others, 8 April 2014, and C-362/14 Maximillian Schrems v Data Protection Commissioner, Judgment of 6 October 2015; the ECHR’s judgments Zakharov v Russia, Judgment of 4 December 2015, and Szabó and Vissy v Hungary, Judgment of 12 January 2016.

55 See e.g. the most recent (at the time of writing) concluding observations from the UN Committee for Human Rights on the states parties’ periodic reports at the March 2016 session: CCPR/C/NZL/CO/6 (New Zealand), items 15–16; South Africa (CCPR/C/ZAF/CO/1), items 42–43; Sweden CCPR/C/SWE/CO/7), items 36–37.

56 Delfi, paragraphs 11–14.

57 Ibid., paragraphs 16–18.

58 Ibid., paragraph 21.

59 Ibid., paragraph 23.
Constitutional protection for freedom of expression

60 Ibid., paragraph 24.
61 Ibid., paragraph 27.
63 Ibid., paragraph 110.
64 Ibid., paragraph 162.
65 In particular, András Sajó is also a leading academic authority in comparative constitutional law.
66 Delfi, András Sajó’s and Nona Tsotsoria’s dissenting opinion, paragraphs 1–3 and 35.
67 Ibid., paragraphs 13–14.
68 Ibid., paragraph 20: “Vaguely worded, ambiguous and therefore unforeseeable laws have a chilling effect on freedom of expression.”
69 Ibid., paragraph 38.
Constitutional protection of freedom of expression in Sweden – conflicts and turning points

Johan Hirschfeldt

Introduction

Freedom of expression as a constitutional core value

Freedom of expression is a central human freedom and a right. It is thereby constitutional in nature, and a precondition for the free formation of opinions.

It is worth pausing here to observe the prominent position that the principle of free formation of opinion holds in our Constitution. It has been included as a crucial building block for the implementation of democracy in the very first paragraph of the Swedish Instrument of Government, and then expressly described in the Instrument as “one of the fundaments of democracy”.¹ The free formation of opinion is, of course, a precondition for the free use of the right to vote.

The concept of free formation of opinion also bridges to the provisions on freedom of the press and the other positive freedoms. These are freedom of expression, freedom of information, freedom to demonstrate, freedom of assembly, freedom of association and freedom of religion. The Principle of Public Access to Official Documents, which is allocated a special chapter in the Freedom of the Press Act, also belongs to freedom of opinion. In Sweden, these freedoms have been set primarily as fundamental rights and freedoms in the chapter on rights in the Instrument of Government.²

But here, a bridge is also built directly to additional constitutional laws: the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, in which central forms of the exercise of freedom of expression are regulated. Henceforth in this article, the concept freedom of expression will be used to include freedom of the press, unless otherwise indicated.
Freedom of opinion is thus directly linked to the opening paragraph of the Constitution, and is thereby included among its core values – core values that, in turn, are a prerequisite for democracy. Constitutional regulation in the field of freedom of expression is quite extensive.

In the constitutions of other countries, freedom of expression is not usually placed very high in the catalogue of rights. Sweden has chosen not to regulate social rights more thoroughly in its Constitution; instead, it has chosen only to proclaim them in what are usually referred to as provisions stating objectives.³

The usual method is for freedom of expression in the constitutions of states to be regulated by a fundamental statement of principle, and then to be given its more detailed content at the level of general legislation. The statement of principle is given its more applicable meaning through legal interpretation in the courts.

In modern times, this type of system was chosen for the Constitution of Finland in 2000 as regards freedom of expression and public access to official documents.⁴ Freedom of expression is given its definition there, and applies to all forms of utterance. In other words, it is more general and technology-neutral. A prohibition against advance review and other advance obstructive acts of interference is linked to this. Moreover, the Principle of Public Access to Official Documents is established. It is then decreed that additional provisions will be issued through legislation. More thorough provisions in this central area of freedom of expression are given in 26 paragraphs in the Act on the Exercise of Freedom of Expression in Mass Media. Naturally, there are also a large number of legal provisions on freedom of expression.

The provisions on freedom of expression in the Norwegian Constitution were similarly re-regulated in the 2000s. Freedom of expression was also decreed in a paragraph in the constitutions of Denmark and Iceland. The same is observed in the European Convention for the Protection of Human Rights and Fundamental Freedoms; the fundamental freedoms applying to freedom of expression are found in Article 10.

In a similar manner, the Swedish constitutional regulation begins with four paragraphs in the Instrument of Government chapter on freedom of expression and the particular grounds on which it may be limited through law and only through law.⁵ However, in addition – in the areas of freedom of the press and certain other forms of media as well on the issue of the right to be informed about public documents (the Principle of Public Access to Official Documents, with provisions on their application) – there is not merely a general clause or the principles indicated in the Constitution. Instead, penal, procedural, and even a great number of administrative provisions have
been brought in at the constitutional level. From an international perspective, detailed constitutional regulation of this kind, in this field, is unique.

This system is not new; it goes back through a long historical development in Sweden, primarily based on Freedom of the Press Acts of 1810 and 1812, but ultimately with its roots in 1766. The Freedom of the Press Act of 1949 contains 14 chapters, with a total of 127 paragraphs, and there are eleven chapters with a total of 63 paragraphs in the Fundamental Law on Freedom of Expression of 1991, which are linked to it to a certain extent.

Recently, representatives of all Parliamentary parties commented on the value of the Swedish regulations as follows:

[There] is a theme, or tradition, from the creation of the Freedom of the Press Act in 1766 down to today as regards establishing freedom of expression at the constitutional level.

The Freedom of the Press and Freedom of Expression legislation benefit, and have benefited, the development of society. As a part of our constitutional heritage, they have made open, free social debate possible and contributed to progress in all other areas of society.6

The challenges of our age

Over the course of the last few years, freedom of expression and openness, with all their consequences, have become dramatically more significant to the life of society. You only need to recall the Arab Spring, as well as violence and threats against journalists – with the attack on Charlie Hebdo as the most important example. Added to this are the revelations from Wikileaks and Edward Snowden, as well as leaks from banks and tax havens – the latest one through the Panama Papers. The course of political events is intimately associated with information, disinformation and radio silence. Globalisation leads to increased openness and freedom of expression, but also to their direct antitheses. When you have power over information, you set the agenda.

The importance of the media is clearly illustrated here. One new feature is the collaboration between newspapers and other media in various countries concerning the management of extraordinarily large amounts of material with simultaneous publication. Freedom of expression is strengthened by collaboration of this kind and, it is hoped, this also provides protection for the basic material and sources. Another trend is illustrated by the Google verdict by the European Union Court of Justice on the right to be forgotten, which poses personal data protection and personal integrity against the interest of openness and the public interest.7

It can also be observed that the idea of the Principle of Public Access to Official Documents is now firmly winning ground internationally, and also in the praxis of the European Court of Human Rights.8
At the same time, we are facing major changes due to the emergence of the new social media and the weakening of traditional media. Technological developments open up new methods of communication that are sometimes not covered by the stronger regulations on freedom of expression applying to traditional media. Media consumers are involved and become producers themselves, they participate in the flow of information. The activities of the media have moved from delivering products to being part of continuous processes. This leads to new issues concerning responsibility and the boundaries between freedom of expression and the right to privacy – something that is illustrated by two recent verdicts from the European Court of Human Rights on the limits of responsibility and freedom for Web-based portals as concerns publishing reader’s comments.\(^9\)

National borders are becoming weaker and weaker constraints on human communication. This could lead to situations where Facebook’s community rules\(^10\) restrict and govern in practice, rather than any legal regulation of freedom of expression in individual countries.

Protection for those who express their opinions, and those who wish to do so, must start at the national level but is also increasingly affected in a global media landscape by regulations and circumstances in other countries. If a country that is favourable towards freedom of expression does not protect its system and work to gain international respect for it, there is a risk that its freedom of expression will be curtailed through the restrictive regulations of other countries. A practice known as Forum Shopping in defamation cases is one such phenomenon in international private law that is a consequence of publication occurring, or becoming available, in several countries. A person who feels attacked then seeks to choose the most advantageous country in which to bring an action.\(^11\) Another example is the effects of increasingly far-reaching international cooperation on criminal procedure. From a Swedish perspective, there is a risk that international applications for legal assistance that include demands for house searches or petitions for seizure of data carriers will be formulated according to a supranational lowest common denominator that is much more restrictive than the current system in Sweden.\(^12\)

In a legal sense, globalisation can lead to reduced, rather than increased, freedom of expression and openness. There is a paradox in that, on the one hand increased physical mobility for capital, commodities, services and resource-rich people is growing and on the other hand the space for exchange of information on an immaterial plane risks becoming increasingly restricted.
The significance of how constitutional regulation is designed

The above provides good arguments for strong protection for freedom of expression at the constitutional level that is not merely a matter of principle, but also of enforcement. A system of this kind stands out as resistant but is not problem-free, especially not when confronted with new technological challenges and other regulations in the rest of the world. As in other constitutional contexts, a balance must always be struck here between stability and variability.

This makes the Swedish system of particular interest for further study. How did it come to be in Sweden, and what are the more detailed advantages and disadvantages when choosing between either a detailed and operative, or an overall fundamental constitutional, regulation of freedom of expression? What are the conflicts and turning points in this historical development, and what are the current problems? This is the theme of this article. The fundamental concept and the system for constitutional amendments are an important background issue here. This must first be illustrated.

The design, and amendment of, constitutional law

Design of constitutional law

A constitutional law exercises legal, political and symbolic functions. These vary from country to country for historical, cultural and other reasons. Forms of government and constitutional traditions differ. These differences could be due to the age, scope, design and quality of text. Most European constitutions have between 100 and 200 paragraphs, as well as great variations within their editorial frameworks. The Swedish Instrument of Government has 194 paragraphs; added to this are the provisions in the Freedom of the Press Act, the Fundamental Law on Freedom of Expression and the Act of Succession. The longer and more operational the constitutional provisions are, and the more similar they are to general law, the greater the need to be able to change them. This observation suits Sweden well; it is also usually mentioned among the countries where it is relatively easy to amend constitutional provisions and where it also often occurs in practice.

As regards the regulation of human rights and freedoms, it can be said that the international dimension in these rules reduces the practical need of developing and amending provisions of exactly this nature at the national level. But the need does actually remain here as well, for several
reasons. National rules sometimes go further and provide additional protection for individuals above and beyond international conventions. In certain areas, national provisions may have greater legal and factual significance than international regulations. Moreover, these rights are protected at the national level, which has great symbolic significance. This assertion also suits Swedish circumstances well when specifically regarding freedom of expression.

The relationship of the national constitution to EU law is also an issue that becomes sensitive as regards an area regulated in detail in constitutional law, such as the Swedish freedom of the press and freedom of expression.

Amendment of constitutional law – in general

Written constitutions generally contain the common feature of particular rules on how they may be amended. Such amendment rules are nearly always more restrictive than where amendment of general law is concerned. This typically requires a qualified parliamentary majority, several decision-making steps, particular deadlines or a combination of such factors. Certain states require a referendum. There are, of course, variations as regards issues such as: are there specially-qualified preambles in the Constitution that in general may not be amended? Is every technical adjustment an actual constitutional amendment? Must the amended formulation be exactly the same in the second reading? How should the referendum theme be formulated in the event of a referendum? And so on.... Issues like these cannot be dealt with here.

One general point of departure is, however, that when rules on constitutional amendment are designed and applied, the basic challenge is to find the right balance between stability and variability.

If the forms and the material conditions for constitutional amendment are too rigid, lock-in effects may be created in which unsuitable procedures block necessary change. The space for reform therefore becomes too limited. At the same time, it may be important that the constitution is designed strongly enough and resistant enough to create a stable basis for continued democratic development.

As stated, the procedures for constitutional amendment in European constitutions vary. Normally, the periods between two decisions range from a month upwards, as do requirements for a qualified majority with varying quotas. Like some other European countries (including Benelux and Estonia), all Nordic countries have an ordinary procedure for constitutional amendment that requires an intervening parliamentary election.
Amendment of constitutional law in the Nordic countries

However, the differences among the Nordic countries are equally as great. The one extreme is Denmark, where a referendum with qualified quorum rules is required and where it is very difficult to implement changes to the Constitution of 1953. The other is Sweden, where a constitutional amendment can take place with a simple majority. From an international perspective, this is quite unusual. In constitutional praxis, however, very broad majorities have been required for constitutional reforms in Sweden. At the same time, constitutional amendments are quite common.

The differences are of significance to how the Constitution is used and interpreted, how it is underpinned with underlying legislation, and how the constitutional debate is undertaken.

In Finland, the primary rule is that a proposal for a constitutional amendment that receives a simple majority must rest until the parliamentary session after the next general election. After that, a decision is made on the proposal with a 2/3 majority. An exception is made if 5/6 of those voting in Parliament consider the proposal to be urgent. The proposal is then declared not to be pending, but can be passed immediately with a 2/3 majority.15

On the amendment of constitutional law in Sweden

In Sweden, a constitutional amendment requires two decisions, identical in wording, with an intervening election (general election or extraordinary election). As mentioned, a simple majority is required for the decision. Normally, a period of nine months applies from when the proposal is made. There is a special process, however, for urgent proposals. With a 5/6 majority, the Committee on the Constitution may decide on an exemption from this period. A decision of this kind does not, however, entail an exemption from the requirement for an intervening election.

The nine-month delay is in place in order to prevent any hasty decisions. The idea is to avoid dealing with constitutional amendments that have great fundamental and practical importance only briefly before an election, and the aim is to open up space for extensive public debate.16 In connection with this process for constitutional amendment, there is also an opportunity to hold a referendum on a pending proposal that a minority of MPs can push through. The result of the referendum is definitive only if the decision is in the negative.17

It appears to be more than a coincidence that the principles for the Swedish system of constitutional amendment also came about in the same year as the Freedom of the Press Act of 1766. Both reforms can be placed
into a common historical context that deals with the importance of space for a general debate before important political decisions are made.

The genesis of the constitutional concept and the Fundamental Law on Freedom of Expression in Sweden’s Age of Liberty

*The constitutional concept – a legacy of the Age of Liberty*

The 1766 regulation of the freedom of the press and the Principle of Public Access to Official Documents took place through the issuance of the Freedom of the Press Act, which was characterised as a constitutional law. There, it was decreed: “may the unfailing existence of the freedom to express yourself in writing and freedom of the press that has been here determined possess the absolute assurance that an irrevocable constitutional law entails”. No one was allowed to even recommend any changes to it, and the Swedish Government declared itself unwilling to permit the least amendment, alteration, or explanation that could lead to the curtailment of the freedom to express yourself in writing and the freedom of the press.

How was this fundamental concept regarded in the Age of Liberty, and what forces were at play regarding the establishment of a new constitution and constitutional amendments?

After the death of Charles XII, the Parliament – the four estates – could act as a constituent or constitutional assembly. During the Age of Liberty, Parliament then developed the view that various aspects of power and the form of government should be regulated in the country’s fundamental or constitutional laws, which were the concepts used. The Instrument of Government, provisions concerning Parliament, and other concepts belonged here. The constitutional form was also chosen to regulate the freedom of the press and so illustrates the significance it was considered to have when the reform was implemented by the estates.

The ideal was that a constitutional law would be eternal and unalterable. There was no system for making additions or amendments to constitutional laws; they were considered immoveable. This caused increasing problems that were finally solved by a statute – the Act of 12 November 1766 for the Promotion of the Proper Execution of the Laws, which was also considered a constitutional law. The freedom to express yourself in the written form and the freedom of the press were also indicated as areas of reform in this ordinance. The ordinance decreed that everything the estates henceforth could consider necessary “to explain, add, adjust, and improve” the
constitutional laws could only be taken up as a proposal in one Parliament, and then could only come under final review during the following Parliament. A decision then required the approval of all four estates.

The ideal was, however, that a constitutional law would be immoveable, eternal and unalterable. This thought was also reflected in the Freedom of the Press Act of 1766 with the requirement for its irrevocability and the ‘unfailing’ existence of the freedom to express yourself in writing and the freedom of the press. These expressions may be judged as more rhetorical than legally binding. The concept of constitutional law was still new and unstable. The development of the content of a constitutional law through interpretation and changes to freedom of the press in a broader direction was not considered strange.\(^{18}\)

After the political revolution of Gustav III, the New Instrument of Government of 1772 was introduced, which abolished all constitutional laws established after 1680. However, the principle of the immovability of constitutional law was preserved. There was no system for the amendment of constitutional law.

In the Instrument of Government of 1809, the principle from 1766 of amendments to constitutional laws through the decisions of two Parliaments with unanimous approval of the King and all four estates was taken up.\(^{19}\) A clear system for amending constitutional law was now established, with the principles of 1766 as a direct model. The Committee on the Constitution provided this justification:\(^{20}\)

This Committee, which anticipated that the constitution the estates would now establish could never be complete, wished to open up opportunities to improve it when a more than temporary general opinion on it had been established. This possibility would, nevertheless, be surrounded by formalities that rendered it more difficult. These were necessary in order to deter attempts that were not well thought out and to prevent hasty decisions... And so that under no condition of violence nor popular delirium may an amendment of the constitution be pushed through under the guise of legality, the Committee established the principle that every such change would not be adopted before the subsequent Parliament.

Thus was formed the system foundation (still valid in Sweden today) for how constitutional provisions come into existence and are amended.

The constitutional concept and regulation of freedom of expression are linked in Sweden

It must be stated that there was uncertainty around the formal status of the Freedom of the Press Act of 1766 as constitutional law as the concept of constitutional law was unclear at that time. It is instead more impor-
tant to note the proclaimed, and original, intent of giving the Freedom of the Press Act the higher status of constitutional law. If the coup d’état of Gustav III had not intervened, it is possible – in theory, in any case – that the status of the Freedom of the Press Act as constitutional law could have been explicitly confirmed.

The system the younger Caps introduced in the final phase of the Age of Liberty for the establishment of constitutional law has survived in Sweden – in an international context this may be regarded as a very early attempt at striking a balance between stability and change, and is an excellent example of how long-lived and robust a constitutional concept can be.\(^{21}\) The requirement for decisions by two Parliaments with an intervening election concerning constitutional amendments is supported by the instruments that the Principle of Public Access to Official Documents and the Freedom of the Press Act constitute. These means enable a public discussion on the matter to be opened up in society prior to constitutional amendments without sudden, temporary opinions having an immediate effect. If the Principle of Public Access to Official Documents and the freedom of the press are regulated in greater detail in constitutional law, it means that the effects of the system are more assured.

It can thus be stated that the question of establishing and amending constitutional law, and the Act on Freedom of the Press and the Principle of Public Access to Official Documents respectively, were linked together in the views adopted in 1766. This is a clear expression of a pre-democratic idea about the significance of public discussion of central social issues – or, in other words, about the importance of the free formation of opinions.

It is often said that it is striking how many constitutional amendments occur in Sweden. This applies also to the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. This is primarily a question of technical adjustments and amendments that are linked to the development of media technology. However, the stipulation of a simple majority for constitutional amendments also leads to major material changes being implemented, even though strong minorities question them. Changes to legislation during the Second World War illustrate this.\(^{22}\) However, the aggregate impression is still that it is striking how stable constitutional laws in Sweden are, despite the application of the simple majority. This has been primarily due to a well-established political consensus in the country that constitutional change should take place based on a broad parliamentary majority.

The system of the requirement for two identical decisions of Parliament, with an intervening election, in order to amend constitutional law can thus be said to offer better resistance to rapid, hasty changes based on sudden, temporary opinions than the system that applies to amendment of general
law. The requirement for an intervening election also provides space for public reflection and debate on a pending constitutional issue. Freedom of expression being regulated in such detail at the constitutional level in Sweden results in the strengthening of these protective mechanisms.

In this context, it should be mentioned that, according to a stipulation in the Instrument of Government, Sweden also has two ‘semi-constitutional’ laws: the Riksdag Act and the Law on the Church of Sweden. For legislation of this kind, apart from the rules on establishment of constitutional law, there is an opportunity to take a decision on only one occasion, but with a qualified majority (three quarters of those voting and more than half of the members of Parliament voting for the decision).[^23] This intermediate form of legislation is also represented in Sweden. The idea of applying this intermediate form here with regard to a wider category of laws (cf. the French *lois organiques*) has been discussed but not considered in greater detail.^[24]

The Principle of Public Access to Official Documents was born with the Freedom of the Press Act of 1766

In the Parliament of 1766, the younger Caps had pushed through a unique ordinance on freedom of the press in which this freedom and the Principle of Public Access to Official Documents were linked together. Here, back in the pre-democratic era, Sweden made a very important contribution to the international constitutional legal development of later times.^[25]

This regulation of the freedom of the press was also constitutional in its character, in the sense that it was proclaimed to have the character of constitutional law.

Even if the expression itself only began to be used much later, the Principle of Public Access to Official Documents in Sweden was, from its inception, an integrated part of the constitutionally regulated freedom of the press. In fact, the Principle of Public Access to Official Documents and its interweaving with the freedom of the press is perhaps the core of the Act itself. The younger Caps could now openly criticise the earlier policies of the Hats, and published damning material from the previous administration. Nordencrantz’s idea on the importance of being able to openly scrutinise the activities of Government officials also underlay this measure.^[26]

In itself, freedom of the press was not the most important thing. It can instead be regarded as a necessary precondition for providing the space, with the support of public access, to influence the country’s governance and development. It is therefore not the classical freedom of thought and belief
as such – after the pattern of thinkers such as the French Enlightenment philosophers – that is the essential part of this early Swedish constitutional concept, but the opportunity for review and public discussion. The introduction to the Freedom of the Press Act of 1766 made possible “unhindered mutual enlightenment (for the public) in all sorts of useful subjects” as the purpose of the Act stated. Freedom of the press, so to speak, came as part of the package. Article 6 of the Freedom of the Press Act decreed that freedom of the press included “all correspondence, particular acts, minutes, verdicts, and judgements”. According to this Act, the right to print these documents applied both to those that belonged to the past and those that were currently under processing. Documents coming in from individuals to the Government agencies were also covered. Even voting records from the courts and civil service departments would be accessible. Furthermore, documents from the Council of State and the estates were covered – in fact, even the King’s dictations were included. Foreign policy documents of a secret nature, however, were exempted. Apart from the statement of the principle on openness, in the Freedom of the Press Act there were provisions which enumerated all the types of documents that could be printed, and could thereby be said to actually be covered by the Principle of Public Access to Official Documents. It could be defined as regulations with a statement of principle on openness followed by rules of casuistic design (i.e. the particular cases are defined).

This casuistic technique in particular has later been criticised many times. It is rich in detail and can often require amendments. But it was also regarded by its supporters as completely essential in the fight against curtailment of freedom for the press and for public access. Even today, this design is characteristic of Swedish public access and secrecy legislation, even if regulation has now, to a great extent, been shifted down to the level of law, to be established in particular law.

Also in the parts purely related to press law, the Freedom of the Press Act of 1766 laid the foundation for continued Swedish development in several important aspects; see further the article by Hans-Gunnar Axberger. What should be emphasised here is the fact that certain important principles were written into, and developed in, constitutional law, and that these still lie at the constitutional level in Swedish legal regulation. The fact that a special list of crimes was brought directly into the Freedom of the Press Act is of great importance. The point of departure for the essential principle of exclusivity lies here.

The actual application of the Freedom of the Press Act of 1766 soon demonstrated shortcomings and problems. The Act has been assessed in various ways.
A Gustavian-oriented researcher, Lydia Wahlström, was critical: “The Caps in 1766 came out with the first act on freedom of the press, strictly speaking for the reason that they wanted to tear down the Hats in print. But when the Hats also availed themselves of freedom of the press against the Caps, they began to regret that they had implemented it.”

Her contemporary, Fredrik Lagerroth, wrote in his monumental work *Frihetstidens författning* (The Constitution of the Age of Liberty) about a new constitutional record of an impressive type: The Freedom of the Press Act of 1766 was the first of its kind in the world.

Hilding Eek, an expert on press law, later expressed the following: by setting up the Principle of Public Access to Official Documents, which stretches across the entire field of public law, in 1766 “a new constitutional principle – the principle of the participation of ‘public opinion’ was introduced into the procedures of constitutional supervision based on the possibility of oversight over the entire field of state operations, and of criticism of this, both large and small.”

**A new, qualified discussion on freedom of the press**

The article by Hans-Gunnar Axberger deals with developments during the Gustavian era, when regulation of freedom of the press lost its constitutional status and freedom of expression was met with ever greater repression during the ‘iron years’. At the same time, at the end of the 1790s several people emerged in a qualified discussion on the principles and problems of freedom of the press. This discussion was constitutional in character. It was a matter of finding the balance between freedom and order. The limits of the freedom of the press had to be discussed. Here demand for reform developed and these individuals – the father of the constitution Hans Järta among them – pushed these demands to realisation in the 1809 Instrument of Government after the political revolution in March that same year.

Another was Georg Adlersparre, who was very involved in the issue of freedom of the press; in an article in his own journal, *Läsning i blandade ämnen* (Reading on Miscellaneous Subjects) he indicated the significance of public opinion. According to Adlersparre, only informed opinion could form the defence of citizens’ personal freedom, life, property and the complete happiness of society. He regarded freedom of the press and Public Access to Official Documents as the core values of a constitution. Adlersparre called freedom of the press “the constitution’s real protection”.

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In 1797, Carl Gustaf af Leopold wrote in Adlersparre’s journal about freedom of the press in his essay *Om svenska tryckfriheten. Försök att bestämma dess nuvarande lagliga gränser*. (On Swedish freedom of the press. An attempt to determine its current legal boundaries). The primary concept in this essay is the same as that of the Scottish Enlightenment philosopher David Hume. Individuals should be judged by the law, and not by the arbitrariness of civil servants. Leopold especially defended satire and the freedom of the author. Leopold’s main perspective in the article was that the legal provisions in the field of freedom of the press must be carefully defined and unambiguous so no room was left for the arbitrariness of a prosecutor or judge.

He further wrote that the text could be inappropriate and – in his own feeling – repugnant, but as soon as the issue concerns criminality according to the law, it is necessary to follow the law to the letter, and not mix criminal responsibility with your own individual moral judgement. The problem is that, as long as the concept of the law is uncertain and vacillating and requires interpretation, then too much depended on the judges and their opinions. It should not be that the most beneficial truths are scared off, that the hand on the pen is stayed, and that the idea itself in a person’s heart is threatened through the uncertain fear of temporary and incorrect concepts, misunderstandings or misgivings in the heads of others. It is a matter of setting up a limit for zeal that itself poorly understands the true and the good. The nature of this zeal is normally, with an abundant passion for public order, mistaken on issues concerning the means to achieve it. It is a matter of holding back your convictions, indignation and misgivings.

Leopold concluded his article by asking the question: Where is the opportunity to give the instructions of the laws, at one and the same time, breadth and limitation so that on the one hand they do not lose its nature of urgent brevity, and on the other hand nothing is left to the discretion of the judge – or so that the laws themselves are, at one and the same time, laws and interpretation of the law? In a later article in Adlersparre’s journal from 1799, *On Civil Liberty*, Leopold argued that freedom of expression is the most secure protection of civil liberty. A people who have other freedoms, but not freedom of expression, have merely been lent them out of kindness. Leopold thus marked the principle – now fundamental – that freedom of expression belongs to the core values of the Swedish Constitution.

Leopold’s linguistic attire is not entirely easy to understand today, but the content of his reasoning is strikingly universal and timeless – especially as regards his formulation on the risk of self-censorship when freedom of expression is unclear and weakly regulated. Agneta Pleijel takes up the issue of self-censorship in her article.
The ideas that led to the first Freedom of the Press Act in 1766 also inspired the men of 1809 to a considerable degree. The fathers of the Constitution took up the issue. We know that Järta asked: “How widely may freedom of the press extend? How will it be preserved?” And A. G. Silverstolpe responded: “For the enlightenment and preparation of opinion, freedom of the press may – to a certain broad but determined degree – be unconditionally established in the Constitution itself.” Silverstolpe developed his purpose with this reasoning.

I have declared the main object to be the enlightenment and preparation of public opinion. I believe that every imperfect institution of the state must be broken down in a revolutionary manner, if it is not gradually improved. – – – The welfare of the state requires the constant attention of its citizens in such a way as to remedy deficiencies. – – – So is a general way of thinking shaped, and only this general way of thinking accomplishes improvements without a breakdown of the state. – – – I thus regard the uninterrupted enlightenment of the general ways of thinking as the most superior magical power for the maintenance and improvement of the Constitution – – – This undoubtedly imperfect Constitution then needs a support and a helper: search anywhere you like, this support and this helper is found nowhere else than in public opinion.”

These ideas were taken up in the Committee on the Constitution’s famous Memorandum No. 1 from the early summer of 1809. The presentation of the famous division into three parts of the executive, legislative and judicial powers is preceded by a few reflections on the connection between opinion and constitution. The Constitution at the same time creates, presupposes and strengthens “a public way of thinking”, and the Constitution itself is then developed and supported by this way of thinking. This identifies a fundamental idea that a constitution must be communicated with the citizens in various ways. Only then can it become a living document in the life of society. Consequently, opinion building was paramount. In turn, this required constitutional guarantees of freedom of the press as a foundation for open debate – the same fundamental idea as in 1766.

In 1809 the Instrument of Government, the starting point – also formulated by Silverstolpe – was established in two paragraphs.

Article 85 of the Instrument of Government established that also “the ordinance on general freedom of the press (which is determined) in accordance with the principles in this Instrument of Government” is to be regarded as a constitutional law.
The principles are published in the following paragraph, Article 86. It has been said that the formulation of English lawyer William Blackstone – “The liberty of the press is indeed essential to the nature of a free state – no previous restraint upon publication” – lies behind the formulation of the definition of freedom of the press in Article 86. Freedom of the press is again established as constitutional law:

The freedom of the press is understood as the right of every Swedish citizen to publish written matter, without prior hindrance by public authority or afterwards being prosecuted for its content only before a lawful court, and therefore not to be punished in other cases even if its content violates a clear law enacted to preserve public order without suppressing information to the public. All documents and records in any case whatsoever, excepting those records that are kept in the Council of Ministers and with the King in ministerial business and command cases, may be unconditionally published in print. Records and documents of the National Bank and the National Debt Office concerning business that should be kept secret may not be printed.

The latter part of the provision would remain unchanged until 1937, when it was given the wording: “All public documents may unconditionally be published in print, where the Freedom of the Press Act has not established otherwise.” The Principle of Public Access to Official Documents in the Swedish Constitution thus came, up until modern times, to be associated in principle with the right to print information.

A proposal for an act on freedom of the press was then established. Memorandum No. 24 of the Committee on the Constitution from November 1809 emphasised that freedom of the press, taken in connection with the current Constitution of the Kingdom, was given entirely its own weight, an entirely distinct indispensability, from its characteristic of being one of the Constitution’s most secure mainstays. It was considered suitable to prepare general information and to shape a rectified opinion, entitled to and capable of publicly scrutinising and assessing the nation’s major concerns. The only media available for use in the legal freedom of expression for ideas was writing or in print. A preamble for the Act on Freedom of the Press was proposed in the memorandum. Article 86 of the Instrument of Government
was quoted there as the foundation for freedom of the press. To this, the Committee added an explanation of the rights – with observations on the regulations against the abuse of freedom of the press – for each and every person to openly express their ideas and communicate in all topics, in any form of writing whatsoever, regardless of what the subject could be. Here we have the original text to one of the parts of Chapter 1, Article 1, second paragraph of the current Freedom of the Press Act.

A Freedom of the Press Act was adopted on March 9, 1810. There we find the classic basic formulation for the central provision of purpose in today’s Freedom of the Press Act, in Chapter 1, Article 1, second paragraph: The freedom of the press “to secure the free exchange of opinion and availability of comprehensive information.” In Article 2, Item 4, there is the decree on the right of every person to publish public documents in the general press. The provision was, in substantial parts, copied verbatim from the Freedom of the Press Act of 1766. It is lengthy, and also contains provisions on secrecy.

The office of the Parliamentary Ombudsman was also introduced in the 1809 Instrument of Government. In the Instrument of Government, the Parliamentary Ombudsman was given a special – and today still permanent – commission to guard the protection of freedom of the press. This has been of great significance for the practical application of the Principle of Public Access to Official Documents and the development of such concepts as the exclusivity principle, the protection of sources, the freedom to communicate information, the prohibitions on investigations and reprisals – all now essential parts of the constitutional protection of freedom of expression (see the articles by Hans-Gunnar Axberger and Nils Funcke).

A constitutional revolution took place in Sweden in 1809 – especially as regards freedom of expression. There are good reasons to assume that the regulation of Swedish freedom of the press and of expression today would have been significantly weaker if the men of 1809 had not been properly prepared and adapted quickly to the unique occasion the situation provided. They used the window of opportunity that suddenly opened owing to the coup of March 13, 1809.

If the foundation for today’s press law had been laid in 1812 instead of 1809, it would most likely have looked very different. It was said, in an earlier troubled time in the 1930s, that here in fact was what could be regarded as the legal principle for the entire span of modern freedom of thought in the country. The formulations from 1809–10 are still alive in the Constitution, especially through the three preambles to the Freedom of the Press Act of 1949: Chapter 1, Article 1, first paragraph; Chapter 1, Article 1, second paragraph; and Chapter 1, Article 4.
Behind these decrees lie the demands, and the hopes, of the men of 1809 for the favourable effects of informed opinion in the continued work on constitutional development – development that was not perceived to be complete as a result of the establishment of the Instrument of Government. They themselves had lived under the unpleasantness of the old constraints. They argued that one of the reasons for the mistakes of the government and the misfortunes that had affected the country was that the voice of the people had not been allowed to make itself heard. Above all, they believed that freedom of the press and public access were the best guarantee of public rights and individual freedom. Swedish legislators have never trusted public opinion more as guardians of the laws and support of the Constitution than they did at that point in time.

The new regulation was established, and immediately questioned

The new freedom was actively used in printed material, using forms of expression and content that led to it being questioned. As early as Memorandum No. 7 of 1810, the Committee stated: “The Committee does not wish to hide that the circumstances of the time, and the experience gained that authors have not correctly understood how to use the freedom the laws grant them and have led to reviews.”

In 1809, the estates – exhilarated by liberal principles and by pure zeal for truth and enlightenment, had had no reason to fear the abuse they now experienced. The Committee therefore proposed limitations regarding statements on foreign powers in the periodical press – this shook up current events and caused a stir. The Committee emphasised that the main object of the Act on Freedom of the Press was to grant cultivated reason all freedom to work for a higher national culture.

Leopold had now changed his mind, arguing that the Act should never have been constitutional law. Article 86 of the Instrument of Government was enough. “All the rest are not, cannot be, and should not be anything other than a simple police decree, amendable ac-
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cording to the lessons of experience, without the formality of deferment to a new Parliament.”35

In 1812, King Karl XIV Johan attempted to abolish the constitutional status of the Freedom of the Press Act. The draft for this proposal was never presented, however, but was stopped when the power of suspension to the Freedom of the Press Act of 1812 was introduced.36 Please see the article by Hans-Gunnar Axberger on the issue of the discussion on the status of the Freedom of the Press Act of 1812 as constitutional law. The general development of the freedom of the press and the Principle of Public Access to Official Documents is further discussed in the articles by Hans-Gunnar Axberger and Nils Funcke, and will be taken up here only in that it is directly connected to constitutional aspects.

So after only two years with the Act, the issue arose of whether it should keep its status as constitutional law or if regulation – apart from its principle in the Instrument of Government – should be moved in whole or in part down to the level of general law. This discussion has also occurred again concerning issues relevant today.

Oscar I’s attempt to make the Freedom of the Press Act a general law37

In the early 1800s, the modern newspaper press developed with the support of the Principle of Public Access to Official Documents. Aftonbladet, with Lars-Johan Hierta as its founder, and Wendela Hebbe, Sweden’s first woman journalist, are in focus here. The newspaper became the subject of several suspensions and legal actions. The power of suspension, however, was abolished in 1844. From his time as Crown Prince, Oscar I had been marked by liberal currents. After his accession to the throne that same year, this trend remained strong for a time but in 1848 the February Revolution took place in Paris, with events such as the March Troubles in Stockholm as a consequence. The important issue of representation in Parliament could not be resolved. The government – including Oscar I personally – began to experience attacks in the press. The King changed his opinion, threatened by the coup d’état in France, which gave Napoleon III power in the Second Empire in 1851. The idea that the Free-
dom of the Press Act would no longer have a position as constitutional law became a personal project for him.

A Government Bill based on this standpoint was presented to the Riksdag of 1853–54.

This legislative matter ended in a defeat for the government in the subsequent Riksdag of 1855–56. The arguments for and against a detailed constitutional regulation of the freedom of the press appear here, clearly and fundamentally. These arguments bear close resemblance to what is said when the issue is discussed today.

At the Riksdag of 1853–54, a Government Bill proposing the abolition of the Freedom of the Press Act as constitutional law was presented. Instead, questions about changes to the regulation of freedom of the press would, from that point forward, be treated as legislation, or an amendment of general civil or criminal law. According to the provisions in the Instrument of Government, laws of this kind could only be amended by a decision of Parliament, with approval from only three estates.

In the Government Bill the cause was stated that, as a consequence of abuse by the press – increasing with each passing year – that threatened to undermine the sanctity of religion, the existence of society and the comfort of individual life, the law on freedom of the press was required to undergo an amendment that concerned such aspects as penal provisions, composition of jury and responsibility for newspapers. It was considered sufficient for securing general freedom and justice if the principle on general freedom of the press and the decree on printing of official documents were retained in constitutional law, as well as the fact that a jury would determine the outcome of cases and that censorship would not occur.

The Government Bill did not, however, contain any pre-prepared proposal for general legal provisions in the area. The amendments were judged to be so extensive that the entire Freedom of the Press Act would need to be re-worked.

The Government Bill became the subject of review by the Committee on the Constitution. All the committee members from the Nobility and the Clergy voted to approve, while the Burghers and the Peasants voted to reject. Lots were drawn, and the lot fell so that the bill was supported in the first reading. The bill then became dormant until the next session of Parliament.

The Committee’s recommendation meant that Article 86 of the Instrument of Government would constitute all that had to be decreed in the Constitution on the issue of freedom of the press, and that more detailed instructions regarding the exercise of this right lay outside the actual area of constitutional legislation. The Committee added:
In connection with the introduction of the new Instrument of Government in 1809, however, there was particular reason to give all legislation regarding freedom of the press and the responsibility for its abuse the characteristic of constitutional law—Freedom of the press, as it was designed and accepted in the 1809 Instrument of Government, was thus a tender and delicate plant that needed to be more carefully protected in order to develop correctly and take firmer root. In recent times, this precious right had been increasingly curtailed; the desire was therefore to, as much as possible, secure its reclaimed possession in its entire breadth. From these circumstances, let it be made clear that the Instrument of Government of 1809 was considered necessary, that all the special legislation regarding exercise of freedom of the press and what was written with it in that context, was given the characteristic of Constitutional Law.

Although in 1809, at the dawn of the new form of government that was compelled through violent events, when freedom of the press would be secured in its uninterrupted exercise through a law in which nearly every particular regulation contained something new and unknown for the nation (and thus not incorporated through custom with its habits), seeking to more firmly ensure the existence and recognition of the freedom of the press as a constitutional right through preparations of greater certainty concerning more prolonged existence for each detailed provision may have been a valid reason—it ought to be admitted that the circumstances are now entirely different.

The Committee further argued that a Constitution containing provisions on subjects unrelated to constitutional law was to be considered unreasonable on grounds of principle, and that practical problems arose when useful decisions were to be made in order to improve press law. In conclusion, the majority of the Committee stated:

[I]t should be acknowledged as a general principle that the slowness in formal consideration— which is of great importance in issues of change to what belongs to the institution of society—conflicts with the correct principle for other legislation that could quickly be able to remedy deficiencies in the law, which could reveal themselves only through their application or could be consequences of unforeseen new circumstances that occur.

Two reservations were stated. One fundamental argument was that the constitutional form of government in Sweden, with the Parliament of Estates still remaining, achieved only modest development, with a representation that was divided and weak in comparison to other countries in Europe. The same law that safeguards the social contract must therefore also safeguard the freedom of the press in its entirety.

The Committee report was followed by intense debate in the four estates. When the pending proposal re-emerged during the Riksdag of 1855–56, the Government realised that the proposal would have difficulty in gaining a hearing. Even the Government’s foremost advocate, J. A. Gripenstedt, strongly objected to the proposal in his expression in the Estate of the Nobility. The proposal was voted down by all four estates, with very large ma-
The parliamentary publications of 1855–56 depict the very lively, eloquent debates that took place and that will be referred to here.

For rejection, it was stated that freedom of the press was the strongest safeguard of the people’s freedom, and the most precious and most important of the people’s rights. The free press was described as an institution of control intended to prevent those in authority from abusing their power and to deter them from acting for selfish purposes.

Freedom of the press was further held up as an institution intended not only to inform people, but also those in authority about conditions in society. Through the information that freedom of the press provided, those in power were expected to be given the intelligence necessary to take well-founded decisions.

Through examples taken from history, several members described how autocratic rulers could retain their positions of power through preventing journalistic activities, and thereby deceiving the people. If freedom of the press was turned into a weakly-defined right in the Constitution, it was feared there would be an immediate risk that in the future, this right would be curtailed by a presumptive despot.

As the correct solution, it was thus recommended to allow Swedish freedom of the press be strongly regulated in detail in the Constitution from then on. This solution was expected to protect Sweden from falling victim to new, tyrannical rulers with ambitions about leading the people into darkness and ignorance. As an argument for the existing level of detail in the Constitution, several members of the estates called attention to worrying contemporary conditions abroad. Prussia was mentioned as a warning example of how a state power that only allowed freedom of the press as a weakly-described right in its Constitution was able to annihilate that right through extensive curtailments in postal conveyance regulations, applicable to newspapers, at a lower constitutional level. The Prussian government was, namely, able to forbid the postal distribution of the newspapers it found objectionable.

Several members further pointed out that the Government had not made any concrete proposals for changes in press legislation, but was content only to propose that it should not continue as constitutional law in order to make future amendments less complicated. The uncertainty over how clarifying rules in general law should be designed was used by several members as an argument for opposing the proposal. The alleged negative attitude of popular opinion was also used as an argument against this Government Bill.

What is especially striking is that the criticism from the Estate of the Peasantry concentrated on the significance of the Principle of Public Access to Official Documents for the control of authorities in order to protect the farmers against civil servants. One member of the Estate of the Peas-
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antry, Nils Larsson, argued that freedom of the press was vulnerable to an odious system of strangulation, and he was amazed that the pen of the member of the Council of Ministers who countersigned the proposal had not refused to release its ink. Another member, Pehr Larsson, thought the proposal should be rejected and put aside with disgust.

The few members who supported the proposal argued such aspects as that, for practical reasons, it was mistaken to allow the Constitution to contain detailed rules that may need to be adapted according to changing times. One of the members in the Estate of the Clergy argued that the existing level of detail in the constitutional law on freedom of the press was the result of the fathers of the Constitution having an oppressive regime fresh in their memories and that, as a reaction to the autocracy, they went too far in introducing all the detailed regulations into the Constitution. Advocates of the proposal also dismissed apprehensions of far-reaching curtailments to the freedom of the press. According to these members, there were no reasons to suspect anyone of wanting to abolish freedom of the press! The proposal was thus not implemented, and the Act on Freedom of the Press remained as a constitutional law.

The King is bid farewell by the four Estates – Nobility, Clergy, Burghers and Peasantry – in the Hall of State (Rikssalen) in the Royal Palace, 22 June 1866. After that, the Hall of State ceased to function as the premises for Parliament, which moved to what is today known as the Old Parliament House (Gamla riksdagshuset) on Riddarholmen. Lithograph in Ny Illustrerad Tidning, 1866. National Library of Sweden.

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Herman Ludvig Rydin, Professor of Constitutional Law and the nineteenth century’s leading expert on freedom of the press legislation pointed out that the composition of the country’s representation constituted a crucial obstacle to the adoption of this proposal: 40 Certain classes enjoyed a pronounced advantage in relation to the majority of the people and therefore the decisions of the estates did not always express the desires of the people, the current representation on their own could not safeguard the general interest of the people but had to be guided by a free press. It was therefore of importance that freedom of the press was protected against surprise attacks. “Were the Freedom of the Press not constitutional law, circumstances such as the events of 1838 and 1848 could easily call up a law which, brought about by a momentary outburst, could throw the press into oppressive chains forever.” Rydin added that, in contrast to civil and criminal law in which governmental power and representation had the same goals, the Freedom of the Press Act intended to prevent the repetition of former usurpations by the Government and individual classes. Rydin was not, however, entirely out of sympathy with the importance of making the necessary amendments.

Continued work on amendments within the framework of freedom of the press as regulated by the Constitution

No further proposals of the same kind were put forward during the latter half of the nineteenth century. The political struggle sharpened during that period, and freethinkers criticised religion. Here, legal action concerning freedom of the press became the instrument of state powers, as well as the idea of legislative changes in the field of freedom of the press. Some proposals for a new Freedom of the Press Act were therefore prepared. These were not implemented, however. On the other hand, partial changes to the Freedom of the Press Act were implemented to a certain extent. Most important to note here is the breakaway in 1876, by the Government, of literary ownership rights (copyright) from the Freedom of the Press Act into general civil law. 41 Otherwise, a number of smaller legal technical changes primarily took place in the Freedom of the Press Act, especially as regards the more administratively oriented provisions, in order to remedy various obvious problems of application.

In 1909, an enquiry was set up into the issue of “revision of the Act on Freedom of the Press for the purpose, while keeping the grounds for applicable provisions as far as possible, of applying these according to changed
circumstances and acquired experience of existing deficiencies”. The result was the report of 1912. The proposal was not implemented, but greatly influenced the reform work that followed later and forms the basis for the Freedom of the Press Act of 1949, which is still in force. The report discussed how the problem should be solved. It was stated:\footnote{42}

Even a revision, which exclusively sets its task in editorial improvement of applicable provisions, must result in an entirely new arrangement and formulation. The venerable redressing of the Swedish Freedom of the Press Act – with all its deficiencies and its technique little suited to legal application – is, however, namely a general operation, but also a general operation of a particularly delicate character. To a far greater degree than in other legislation, the correct spirit of the law must be found in its scattered expressions and small features – most often given in an entirely unexpected context. It is through extremely careful increase of this fragile material that it became possible for the legal use of the past century to create a legal application of tolerably implemented consistency without doing violence to the spirit and wording of the law. Laying hands on such a frail garment is entirely too risky an undertaking. It will not allow itself to be patched up; it must be left good as untouched or replaced with a new one. Precisely this condition has, from time to time, stood as a crucial obstacle for even partial reforms of this kind, which to public opinion certainly seemed extremely necessary and useful.

The proposal contained changes in form and arrangement, but not substantially regarding content. “It was believed that the fundamental principles ought to be of the same vast range that was now given the sanctity of constitutional law.” A regulation of nine chapters with a total of 91 paragraphs – many with several items – was proposed. However, it was discussed whether certain details in the Freedom of the Press Act could be transferred to special regulation at the level of general law, and in that connection indicated three areas. These concerned

1) The list of crimes designated as “special press law”.
2) The right to operate a printing house and bookstore.
3) Public access to official documents.

Regarding the final point, it was alleged that it would make a smoother adjustment possible according to changing needs, with the changing forms of the activities of public institutions.

The enquiry did not, however, pursue this idea of special regulation, but stated that the principle of press law being immediately regulated in its entirety through constitutional law should be retained.
Continued constitutional regulation on the issue of public access and secrecy

The Principle of Public Access to Official Documents, its application, and the affiliated regulation of secrecy is dealt with in the article by Nils Funcke. As noted, constitutional regulation in this field goes back to the Freedom of the Press Act of 1766. During the 1800s, the aforementioned Herman Ludvig Rydin formulated a constitutionally based argument for the central significance of the Principle of Public Access to Official Documents, which creates legitimacy for the authorities:

Complete control over all actions by civil servants, which thus can be exercised by every citizen interested in the welfare of society, is no less a guarantee of the integrity of our civil servants and the orderliness of administration than it is also for the security of the individual in the enjoyment of their civil rights. Nor is there probably anything that has contributed so much to education in political life, the strengthening of public spirit and the improvement of our society as the controlling power given to the press over everything a public authority does; nothing that can contribute more to the education of competent civil servants than the knowledge of the different opinions and criticism of their actions than that produced by the press and nothing can contribute more to establishing and strengthening trust between public authority and the individual, which is an important precondition for social development. To be sure, criticism can many times be unjustified or deficient, and unfairly subject the government agency to resentment and scorn. But even criticism of this kind, if it has been guided by good intentions, can produce good results. If it does not lead to anything else, in a public authority that understands the importance of public trust in its ability to work well, criticism ought to generate efforts to deflect the attack through clarifying the importance of the official action to the public, thus exonerating its civil servants from unfair accusations. In this fashion civil servants can, by means of the opportunity offered to show their official actions in the correct light and through the ordeal of criticism they successfully passed through, win a greater reputation and trust than if the comments of the press had not existed. In the opposite case, criticism could easily develop secretly into a distrust that impedes the activity of the authority.

As regards the constitutional position of the Principle of Public Access to Official Documents, we see a number of changes over the course of time. These were preceded by prolonged discussions. It is interesting to note that changes went in both directions. Constitutional regulation has been strengthened through modern provisions concerning the concept of ‘document’ and concerning the process of requesting and obtaining documents, as well as introducing an opportunity for a review, in court, of decisions concerning any refusal to grant access to official documents. At the same time, secrecy rules have become stronger and the actual material
One area that was discussed during the latter half of the nineteenth century was the necessity of introducing the Principle of Public Access to Official municipal Documents too. At first, however, it was not assessed as suitable to strengthen the Principle of Public Access to Official Documents with rules concerning this area. However, in the report of 1912 they did not hesitate on this point and proposed an expansion of the principle of public access as established in constitutional law. The proposal was implemented through a 1937 amendment to the Freedom of the Press Act.

The technique of detailed provisions at the constitutional level on what was public and what was classified as secret, respectively, was also discussed. In 1871, liberal member of Parliament Adolf Hedin pointed out in Parliament the importance of the “casuistry” in Article 2, Paragraph 4 of the Freedom of the Press Act that the Committee on the Constitution had criticised at the time. He argued that it was precisely with the support of “this detailed casuistry that the press, during prolonged praxis – that is, during a prolonged fight against authorities of all kinds – managed to acquire, and develop, a loyal interpretation of the message of the framers of the Constitution; thus we have come to the freedom of the press we can rejoice in.” He provided an example of how he was able to request, and obtain, an instruction document from the Ministry for Foreign Affairs precisely with the support of the enumeration of document types in the Freedom of the Press Act, and warned against replacing the casuistry (“one of the most powerful levers for the promotion of justice and truth in our public life”) with a general phrase.44

Regulation in this area did not actually keep pace with developments in society, and demonstrated significant qualitative deficiencies. The first expansion of the secrecy provisions in the Freedom of the Press Act since 1810 occurred in 1897, when protection of defence secrets was introduced. Up until then, this secrecy had been maintained in a system that actually conflicted with the Constitution.

Around the turn of the twentieth century, it had become increasingly obvious that development in society on certain points justified new secrecy rules, which were introduced into the Freedom of the Press Act later. These measures were established in the early 1900s, but occurred in a rather unplanned manner as and when the need arose. Examples include information from criminal records, medical opinions, income tax returns, and information from documents relating to the activities of the Swedish Bank Inspectorate.
In 1937 the secrecy exemptions from the Principle of Public Access to Official Documents were broken away from the Freedom of the Press Act and brought into general law as a Secrecy Act. This is dealt with in the article by Nils Funcke. The action must be regarded as a weakening – both actual and in principle – of the Principle of Public Access to Official Documents as established in the Constitution. A practical, important reinforcement at the constitutional level that strengthened the situation, however, is as follows.

Previously, the Principle of Public Access to Official Documents was managed by the Parliamentary Ombudsman, who could bring an action for misconduct against civil servants who did not observe regulations. Praxis had developed through the decisions of the courts in these cases, and has been supported by the statements of the Parliamentary Ombudsman. Due to the nature of the matter, however, regulation did not lead to particularly comprehensive praxis. The 1937 amendments to the Freedom of the Press Act introduced the right to a court examination of decisions to refuse the release of official documents. Introducing this reinforcement of the Principle of Public Access to Official Documents into the Constitution was regarded as important at the same time as the more detailed secrecy rules were taken out of the Freedom of the Press Act and moved into ordinary legislation. A little later, the regulation of secrecy underwent comprehensive legal technical changes through the Secrecy Act of 1980 and the new public access and secrecy legislation from 2009. Secrecy has been established in new areas of society and reinforced in others, such as regards international secrecy after joining the European Union.

Through changes to the structure of society, such as the increase in the privatisation of public operations and the reduction of the number of government agency boundaries through the various mergers into larger and larger units, public control through the Principle of Public Access to Official Documents has been weakened. In the field of privatised medical care, schools and health care, the trend now is increased public control through the introduction of new rules that, however, are not placed at the level of constitutional law.

The situation that remains today – that a decision by the Government not to issue general documents, in contrast to what applies to other areas, is withdrawn from legal examination by a court – may be regarded as a weakness in the Principle of Public Access to Official Documents as constitutionally regulated in the Freedom of the Press Act. It should be observed here, however, that a considerable number of cases are handled in the administrative agencies outside the Government, and that the number of administrative cases in the Government has decreased drastically in recent years. It is instead the Committee on the Constitution that plays
a critical role here, according to the Instrument of Government. Nor is it possible to place any Parliamentary decision on the issue of public documents under the review of a court.

In this context, it may be noted that Sweden, in connection with the adoption of the Århus Convention with its rules on the right of the public to environmental information, made a reservation regarding the demand for the right to review in court issues of decisions by Parliament, the Government and the Council of Ministers. See also Helena Jäderblom’s article.

Another issue that could be worth discussing is whether the higher instance of review should not have the opportunity, under certain circumstances (such as when consideration of personal privacy may demand it), to cancel and then re-examine a decision on issuance of public documents taken by a government agency or a lower court. A system of this kind could contribute to the increased establishment of precedent in the area. According to applicable provisions in the Freedom of the Press Act, there is no such opportunity; documents that a government agency or examining court have decided to issue must also be issued immediately, and there is no right to bring a suit against the decision to issue the documents.

The restrictions of the war years followed by a new constitutional law on freedom of the press

In 1937, secrecy regulations had thus been broken away from the Freedom of the Press Act. A certain modernisation of the Freedom of the Press Act regulation of the Principle of Public Access to Official Documents took place at the same time, and court examination was introduced for cases where issuance of public documents had been refused. Certain provisions on the process in cases regarding freedom of the press were also broken away from this constitutional law and moved to general law.

Moving on to conditions during the war years; the design and application of the system of press law were put under severe strain at this time. After that followed the restoration and reinforcement of the freedom of the press, with continued constitutional regulation that took place through the Freedom of the Press Act of 1949. This is dealt with in detail in the articles by Hans-Gunnar Axberger and Nils Funcke.

During the war years, two issues arose: the forms of constitutional amendment in general, and the scope of the constitutional regulation of freedom of the press.

In 1940, in a private member’s motion, constitutional lawyer and professor Nils Herlitz proposed that amendment of constitutional laws should
take place through a single decision by Parliament with a qualified majority. At the same time, as an alternative he proposed giving certain parts of constitutional law the characteristic of general law. The proposal was voted down by the Committee on the Constitution although it was supported by a significant minority there. The question then stood open, but was removed by Parliament in connection with the Freedom of the Press Act of 1949.

The question of the forms of constitutional amendment also came up in legal doctrine during the war years. The design here was a critical view, motivated by legal policy, of the extensive scope of constitutional regulation in the area of press law. In 1942, Hilding Eek published his thesis *Om tryckfriheten* (On the Freedom of the Press). In it, he gave an overview of the legislative design of the ideas on the freedom of the press and from an international perspective he dealt with constitutional protection of freedom of the press, liberal press laws during the 1800s, and the press laws of dictatorships. After a presentation of legal developments in the field in Sweden, he dealt with the constitutional nature of Sweden’s freedom of the press. He pointed out the “singular nature” of the Freedom of the Press Act, and that it was “hopelessly outmoded”. According to Eek, preserving it only because it respected the freedom of the written word made no sense.

As a reason for the necessity of amendment, he argued that various drawbacks in application had arisen as time passed, but that neither enquiries nor legislative history nor the legal praxis of the courts were particularly instructive. He believed this had to do with with the importance of the institution of the jury, and that no fixed praxis could have developed. Eek continued:

> The absence of definite legal praxis within press law has the consequence that it cannot be assumed – as it can in other areas of penal law – that the punishments have become obsolete and lost their significance. Regardless of archaic content or wording, a punishment according to the Freedom of the Press Act can always be invoked, if only political relations within power and social values make it opportune. The press therefore has to count on the fact that the punishments inherent in the Freedom of the Press Act are still in force to the full extent, even if they have not been invoked for a long period of time. One instance of the correctness of this assessment is the abuse on the part of the Government, during the period after the outbreak in 1939 of a new war among the Great Powers, of the power of confiscation in accordance with Freedom of the Press Act 3:9 and 5:13, which had not been applied since the middle of the nineteenth century and was in glaring contrast with the Swedish tradition of freedom of the press.

After that, Eek followed a principled line of reasoning concerning the Constitution’s system of balances, and found that freedom of the press is “guaranteed” through the design of the constitutional institutions and
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corporal powers, thereby themselves forming a “state power” with significance as “guarantee” of the Constitution.50 He discussed the constitutional control and interpretation of constitutional law by the judicial powers.51 By way of conclusion, Eek stated that under normal political conditions they create a particular assurance for freedom of the press in the rules of action drawn up in the constitutional law for protection of the freedom of the press, however during less normal periods conditions are different, as could be observed during the war years after 1939.52

Eek argued that there was a sort of artificial inertia in the Freedom of the Press Act that caused these difficulties. One way out was to “soften up the constitutional system all along the line”. Eek was alluding to the general rules on constitutional amendment, and also indicated an alternative by introducing special rules into the Constitution on exceptional circumstances and emergency legislation. Another way out was to withdraw the characteristic of constitutional law from Freedom of the Press Act. Eek concluded his reasoning thus:53

Concise, though by no means merely ‘ideologically’ designed constitutional regulations, a press law in the modern sense without constitutional character, as well as applicability to the press with certain modifications to provisions of general penal and process law would, without doubt, constitute the most satisfactory system from systematic points of view. It would also clear away difficulties as a consequence of the constitutional nature of the freedom of the press in accordance with the system now prevailing in Sweden.

Eek’s analysis showed that the problems with the 1812 Act on Freedom of the Press remained without the necessary, thorough changes, the obvious need for which had been noted as far back in the report of 1912. He sharply criticised what had taken place in the field before and during the war years, which he argued was in conflict with constitutional law and an expression of reactionary currents in legislation and press policy.54

Interventions during the war years, which included confiscation without trial used against publications making critical assessments of foreign powers, was based on an old, forgotten provision in the Freedom of the Press Act of 1812 that had been duly revived. During the interwar period, this Freedom of the Press Act decree had also been criticised in Robert Malmgren’s commentary on constitutional law as antiquated and in conflict with the general principles of the Freedom of the Press Act.55

Simply put, important reasons for Eek coming to his radical conclusions were that he did not trust the politicians of his day, nor that the courts could exercise the administration of justice in a desirable manner in this area. In light of Eek’s views on legal policy, it may be regarded as a natural
consequence that he did not propose the abolition of the jury function in the area of freedom of the press. He argued that the courts’ application of general laws was to be regarded as more conducive to the rule of law than if they were forced to apply antiquated constitutional laws. The rule of law would thus be strengthened if regulation in the area of press law was modernised and moved down to the level of general law.

The Government policy on freedom of the press during WWII entailed the requirement that similar acts of interference would not be possible in the future. This became the starting point for the committee of experts on freedom of the press in 1944. They argued that “provisions of fundamental significance, even those that relate to the exercise (italics in original) of freedom of the press, should possess the nature of constitutional law”. Furthermore, they believed it was practically significant to keep the provisions that belonged together in the same statute. Breaking them away into a separate law is justifiable only in areas where there were a larger number of detailed rules. It may also be mentioned here that the experts proposed that prohibition on censorship be strengthened with a prohibition on repressive measures, such as confiscation, in administrative regulations.

This proposal formed the basis for the decision to adopt a new Freedom of the Press Act. This took place in the Parliaments of 1948 and 1949, with a general election between. (See the article by Hans-Gunnar Axberger about the Freedom of the Press Act of 1949.)

In connection with the passage of this Freedom of the Press Act through Parliament a position was also taken on the earlier issue, raised during the war years, concerning a more rapid process for constitutional amendment. This opportunity was now rejected, under the justification that the prevailing procedure was considered to provide security against rash amendments during troubled times. The perhaps foremost significance of the constitutional laws was considered to lie in the fact that they constituted a “guarantee against disruption of the country’s constitution, as well as its fundamental legal and administrative principles, during popular moods brought about by extraordinary internal or external conditions”.

The Freedom of the Press Act of 1949 entailed both a restoration and a modernisation of the constitutional regulation of freedom of the press. The same positive view of the demand for constitutional regulation has characterised the period that followed, and resulted in expansions of constitutional regulation, primarily with the establishment of the Fundamental Law on Freedom of Expression of 1991. Only with the turn of the twenty-first century did the questions of principle on a limitation of, or radical change to, constitutional regulation become topical again.
Constitutional regulation is expanded in its interface with new technology

With the Freedom of the Press Act of 1949, a strong consensus was re-established around the principle that press law, even in its instrumental sections, should be regulated in constitutional law. The new constitutional laws preserve contact with the views of the Age of Liberty, refer to the proposal of 1912 for new regulation, and are generally of good legal technical quality. Detailed legislative history that supports the application of the law is linked to the wording of the law.

The half-century-long period that followed – up to the twenty-first century – is characterised by further development and adaptation of this regulation to new technologies that are felt to deserve similar protection under the law on freedom of expression. Furthermore, a new statute for Sweden – the 1974 Instrument of Government – was established. A modern regulation of freedom and rights was gradually embodied into it. Freedom of Expression and the Principle of Public Access to Official Documents as constitutional core values are strengthened. This takes place during a period that is characterised on the one hand by the political and artistic ideals of a new, younger generation, and on the other by the conditions of Cold War security policy. There are tensions here that are laid bare in the IB Affair and its legal consequences; see the article by Hans-Gunnar Axberger. With the development of new computer technology and personal registration, however, the constitutional legislators now faced other, newer problems. See the articles by Hans-Gunnar Axberger, Nils Funcke, and Bertil Wennberg.

It is clear from Wennberg’s article how the principles of the Freedom of the Press Act could form a model when, in the 1960s, legislation was prepared concerning the legal status of radio, regulating legal responsibility. The new medium of television is also here, and later certain new radio media are also included. Even in this legislative matter, the idea is brought up that the new regulation should be placed at the level of constitutional law. Subsequently, there follows – without success – an attempt through the Massmedieutredningen (Mass Media Commission) to design an aggregate constitutional law for the mass media with text to be worked into the Freedom of the Press Act.

On one important point, however, the Commission was successful. This concerns the proposal to expand constitutional protection in the Freedom of the Press Act to cover the processes of duplication that are less expensive and simpler than the printing press, namely stencilling, photocopying, and similar processes. This was called the ’stencil rule’ and was introduced into the Freedom of the Press Act in 1976. This is an issue of voluntary con-
stitutional protection. This may be obtained if an authorisation to publish has been procured, or if the written document is provided with certain publication information. The idea behind the stencil rule has since been given a broader application in the Fundamental Law on Freedom of Expression which, since 2003, has included similar voluntary protection for certain databases and websites etc.

On the issue of how this development leads to the establishment of the Fundamental Law on Freedom of Expression in 1991, see the article by Bertil Wennberg. This prolonged, complicated legislative matter has been characterised by questions being asked – especially on the initiative of the Yttrandefrihetsutredningen (Freedom of Expression Commission) – during an open public debate of the sort that has to take place in connection with constitutional reforms. The question has required exhaustive discussion concerning the design, scope and technology of the new constitutional legislation, with the Freedom of the Press Act as a model. The areas of application for the Fundamental Law on Freedom of Expression are based on the various technological applications. It is usually said that the regulation is technology-dependent, or media-linked. The applicability of the constitutional laws depends on the technology chosen, not on the purpose and content.

The Freedom of the Press Act and the Fundamental Law on Freedom of Expression thus regulate two forms of utterance that, through their methods of production, are separated from other forms of utterance. Outside both constitutional laws, protection for the freedom of expression is weaker. Such is the case regarding a third group of forms of expression such as theatre and exhibitions, as well as other statements, thoughts and sentiments in expression, image, writing or via other methods.

This third section of the protection of freedom of expression to the public is regulated through a pair of essential regulations in the Instrument of Government, and otherwise through general law. Here, the rules are constructed more in accordance with what could be called an international general standard. The Instrument of Government, in Chapter 2, Article 20, raises the demand that delimitations of the freedom of expression must occur through law. According to Chapter 2, Articles 21 and 23, these limitations may only take place if particular purposes are met, similar to those indicated in Article 10 (2) of the European Convention. Furthermore, Chapter 2, Article 22 of the Instrument of Government outlines rules on a special legislative process, with deferment that provides a certain minority protection.

Sweden adopted this general regulation of the freedom of expression remarkably late. An initial proposal for a general constitutional regulation
of rights had been put forward in 1941 by the Tingsten Report. Implementation, however, would wait until the 1974 Instrument of Government, and then took place via gradual expansion.

As is the case regarding the areas of the Freedom of the Press Act and the Freedom of Expression constitutional law, the right to communicate information belongs to this third section of the freedom of expression. This provision has the same ideological foundation as the Freedom of the Press Act. Provisions on protection of anonymity and freedom of informants are found here as support for the right to communicate information. The provisions were gradually expanded after the influence of the Parliamentary Ombudsman's supervisory praxis. This took place especially in connection with the establishment of the 1974 Instrument of Government. Today there are also provisions, with sanctions imposed, on the prohibition of investigation and the prohibition of reprisals. This regulation in the Freedom of the Press Act and Fundamental Law on Freedom of Expression has also influenced the area for the third section of freedom of expression, where the Parliamentary Ombudsman in its supervision of government authorities pursues the principles confirmed in both these constitutional laws. This is an interesting manifestation of the fact that detailed constitutional regulation of parts of freedom of expression can have significance as a model in the application of the law where freedom of expression is regulated in general law only. Regarding the umbrella effect, see the article by Bertil Wennberg.

During this period, when protection of freedom of expression at the level of constitutional law was expanding in many ways, the idea of expanding the system is finally raised through the introduction of the freedom to communicate information in companies and organisations into the Freedom of the Press Act, in order to thus open the door for the exchange of views in the mass media concerning important companies and the like outside the area of government authorities. The matter was studied by the Meddelarskyddskommittén (Informant Protection Commission), but the
issue was written off in connection with the establishment of the Fundamental Law on Freedom of Expression. The issue became topical again due to privatisation in the fields of medical care, schools and health care during the 2000s.

The freedom of information regulated by constitutional law here constitutes the source to communicate information for the work, currently in progress, on introducing systems at the level of general law.

Reform of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. Limit constitutional regulation or combine into a technology-neutral constitutional law?

General

At the beginning of the new century, it became increasingly clear that the current constitutional regulation in the area of freedom of the press and freedom of expression were experiencing problems. Once again, this is a period filled with reappraisal and clashes of opinion. However, the existing system has enjoyed very strong parliamentary support.

The period from the mid-1990s is also characterised by studies in the area that are, generally speaking, constantly in progress. The Media Commission was set up in 1994. This was followed in 2001 by the Mediegrundlagsutredningen (The Media Constitutional Law Report). After that, Tryck- och yttrandefrihetsberedningen (Working Committee on Freedom of the Press and Freedom of Expression) was established in 2003; in 2008 it was reorganised into the Yttrandefrihetskommittén (Commission on Freedom of Expression). All these have presented reports. Finally, in 2014 the Mediegrundlagskommittén (Commission on Media Constitutional Law) was established, which at the time of writing (September 2016) had just submitted its report.

These studies have thus been extremely comprehensive, and have touched on various difficult problems. Certain amendments to legislation have resulted, the most important being the previously mentioned voluntary database rule from 2003. Since then, however, amendments to constitutional law in the area have been few, and of marginal significance. The work in progress, however, touches on the constitutional aspects of the regulation of freedom of expression to a greater degree.
Partial reforms

The necessity for partial reforms of both fundamental laws has been examined owing to the ever-more-rapid technological development in the field of media. Most recently, the Commission on Media Constitutional Law has worked on the following issues.

The database rule – both the automatic and the voluntary regulations – have been studied with regard to such aspects as responsibility for content and limitation. Of particular significance is the issue of protection of personal privacy when sensitive information, with the support of the Principle of Public Access to Official Documents, is entered and compiled in large amounts in databases covered by voluntary protection. Issues of recorded magazine and newspaper archive databases, print on demand and e-books have also been reviewed.

The work currently underway concerns how constitutional regulation should be delimited and defined. The point of departure is still that the delimitations should be regulated based on the technology used, and not based on the content of the utterance (a ‘technology-neutral’ solution).

Since the early 1990s, technological development in the field of media has been rapid. The stacks of books show the number of state reports concerning constitutional protection of freedom of expression. Photo: Melker Dahlstrand.

Without a doubt, the very rapid development of technology constitutes a challenge for the constitutional regulation of issues concerned with freedom of expression. It is difficult to predict changes in technology, even over the next few years. The task of the reform work in the areas of the Freedom
of the Press Act and the Fundamental Law on Freedom of Expression has been described by the late Justice of the Supreme Court Göran Regner, an expert much in demand in the field, as “shooting at a moving target when it takes four years before the next chance to shoot comes along.”

Constitutional regulation and international legal assistance

Another question that may be said to be linked to the effects of globalisation in the area of freedom of expression concerns the space for, and forms of, international legal assistance. Sweden participates in legal collaboration in accordance with various international agreements. The opportunity to assist other countries legally in the areas of freedom of the press and of expression, however, is not regulated. Being able to conduct interventions for assistance of this type requires, among other things, that the utterance is assessed as one of the crimes found in the Freedom of the Press Act, and that the intervention is directed towards someone who could be responsible according to the chain of responsibility in constitutional law. A minor restrictive change in constitutional law has recently been made through the territorial area of application being restricted so that a written document or technological recording will not be considered as being published in Sweden just because it was sent from here to a recipient abroad. If the connection to Sweden is weak, the opportunity for international collaboration is expanded. The issue of international collaboration otherwise remains. This is valid especially if Sweden’s international commitments can be combined with the strict attitude that means express support for the measure must be found in the Freedom of the Press Act or the Fundamental Law on Freedom of Expression. The matter of how the issue is to be handled as part of EU collaboration is especially valid. This has now been studied by the Commission on Media Constitutional Law.

Protection of privacy in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression

A third issue concerns the need for reinforced protection of privacy for individuals in light of the requirements in Article 8 of the European Convention on the right to protection for private and family life. Slander and insults are crimes in the Swedish Penal Code that are also included in the list of crimes in the freedom of the Press Act. A more generally designed “crime against protection of identity”, however, is lacking both there and in the Penal Code. The issue has been handled by the Commission on Free-
Freedom of Expression which, with broad parliamentary agreement, rejected the introduction of a new crime of this kind into the Freedom of the Press Act list of crimes. In international comparison, it is acknowledged that protection for the private life of the individual is relatively weak in Sweden, but studies have shown that there is no actual need to strengthen this protection in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. In an reservation, however, Justice of the Supreme Court Göran Lambertz, the Chair of the Commission, recommended the introduction of the crime of violation of private life.\(^7\)

A review has recently been carried out regarding the general provisions in the Penal Code on protection of private life.\(^7\) The Commission on Media Constitutional Law has not been tasked with handling the issue, as far as the Freedom of the Press Act and the Fundamental Law on Freedom of Expression are concerned. So far, nothing decisive on the issue has been aimed at Sweden from the European Court of Human Rights. In line with Lambertz, however, it may (in my opinion) be questioned whether Sweden, on this point, fully meets the requirements of the European Convention, and also those stated in EU law under to Article 7 in the EU Charter of Fundamental Rights.

*Altered structure for constitutional regulation of freedom of the press and freedom of expression?*

*Tryck- och yttrandefrihetsberedningen (Working Committee on Freedom of the Press and Freedom of Expression)*

One central, strategic issue deals with whether constitutional regulation can be limited to covering only the central principles in the areas of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, which then instead should be transferred to the Instrument of Government, while the more detailed regulation should be moved to ‘semi constitutional’ law or general law.\(^7\) The advantages and disadvantages of such a solution have been discussed, and alternate proposals put forward. The idea of retaining the Freedom of the Press Act and the Fundamental Law on Freedom of Expression in a single, integrated and still technology-dependent constitutional law has also been discussed as an alternate line of development. A further step is the issue, strategically important for the future, of whether the Freedom of the Press Act and the Fundamental Law on Freedom of Expression can be replaced with a single, primarily technology-independent, constitutional law.
A fundamental analysis of these issues can be found in the 2006 Report of the Working Committee on Freedom of the Press and Freedom of Expression.

Behind this analysis also lies an exhaustive international survey by Professor (now Justice of the Supreme Court) Thomas Bull. He takes his starting point in the ‘triangular thematic’ of the freedom of expression, in which the three factors of searching for truth, democracy and the autonomy of the individual speak for protection of freedom of expression, and where there are three arguments that speak for the limitation of this freedom: fear, indignation and protection. He reports on the conditions in the Nordic countries, the United States, Great Britain and Germany. The survey is followed by an analysis of similarities and differences. Based on the detailed constitutional regulation in Sweden, he verifies the inbuilt inertia against change that lies herein which is regarded as valuable protection against less well thought-out changes. This conclusion is modified, however, by the fact that it is so easy to change constitutional laws in Sweden. This weakens the delaying function that is normally linked to constitutional law. Amendments to constitutional law in the area of freedom of expression have become legislative routine in Sweden, which may seem disquieting. Nor does constitutional regulation seem to prevent legislators from being sensitive to what is of topical importance for the day. Another observation Bull makes is that Sweden seems to have relatively little intervention from the courts in determining where the outer limits of freedom of expression lie. Legal processes are unusual, and constitutional regulation ought to contribute to this.

It should be interjected here, however, that the courts now seem to have begun to take on a more prominent role. Over the last few years, there has been a marked increase in the number of important decisions in legal praxis related to freedom of expression.

The report from the Working Committee on Freedom of the Press and Freedom of Expression states that several of the principles of freedom of the press and of expression are mutual in the countries studied, but Sweden is the only country that has a system of sole responsibility. Some form of protection for informants and other sources is common, but the Swedish system with its special rules for public employees, according to which they can reveal otherwise classified information free from liability, is entirely unique. This also applies to the constitutionally regulated list of crimes. In general, Swedish regulation is considered to go further than other legal systems as regards predictability, but the protection of private life is an area where Sweden has taken another route and has weaker protection.
It is in this light – and also based on the issue of technology dependence, a number of problems in application, and the possible influence of EU membership on the Freedom of the Press Act and the Fundamental Law on Freedom of Expression – that the working committee asks itself why there should be special constitutional regulation of freedom of the press and of expression, and how new such constitutional protection could be designed. Apart from the classical arguments, and what Bull stated in particular, the particular importance of protecting freedom of expression in the media is emphasised here. This applies to the organised forms of media that also include the fact that a number of separate individuals are involved in the creation and dissemination of statements, and that technological aids are used. Consequently, there are several points of attack for anyone who wishes to intervene to prevent the statement reaching the public. In this way, the media is vulnerable even if they also have strength in their organisation. Special constitutional protection for the media can be justified with the approach now under design.  

Three alternate regulations of constitutional protection are presented, and in addition to this a status quo solution, the Freedom of the Press Act and Fundamental Law on Freedom of Expression will remain, with the necessary material changes.

The first alternative is described as a minimalist solution, and involves the abolition of the Freedom of the Press Act and Fundamental Law on Freedom of Expression. A special provision in the chapter on rights in the Instrument of Government is added to the protection that the general rules of the Instrument of Government and Article 10 of the European Convention provide; it decrees:

> As regards statements that are made public through written documents, technical recordings or electronic transfers, the principles of freedom from censorship and other obstructive measures in particular shall be observed for publications other than the display of moving pictures, the principle of freedom of establishment for publications other than over-the-air transmissions, and on the freedom to disseminate the utterances to the public as well as the right to provide information for a publication of this kind.

The solution using these four principles means that the area of application for protection becomes greater and also technology-independent. Predictability decreases, and freedom to communicate information is weakened. This alternative requires increased opportunities for judicial review (introduced through the 2010 amendments in the Instrument of Government; see Chapter 11, Section 14, and Chapter 12, Article 10 of the Instrument of Government). One possibility may also be to allow a constitutional court
the task of reviewing compliance of the more detailed protection within the Constitution.

In order to strengthen constitutional protection, the proposed rules in the Instrument of Government that were cited above could be supplemented with an additional three points, namely:

Sole responsibility for authors, publishers, and others.

A specific description of which acts may result in liability for punishment and damages as crimes against freedom of expression.

A specific trial system with the Chancellor of Justice as prosecutor with jury review of crimes against freedom of expression.

The middle alternative is described as a system in which regulation in the Instrument of Government becomes more detailed in its accounting of the fundamental principles, with a special chapter on freedom of expression in certain media and a special chapter on the Principle of Public Access to Official Documents, while the Freedom of the Press Act and the Fundamental Law on Freedom of Expression are replaced with a mass media law at the level of general law.

The maximum alternative is given as being a consolidated, still technology-dependent new constitutional law on freedom of expression in which current problems are also given their solutions.77

The Commission on Freedom of Expression

As one stage in its continued work, in 2010 the Commission on Freedom of Expression presented a report, using as its point of departure the identification of one solution – not technology-dependent, but technology-neutral – with special rules on mass media. Three alternate models were presented to the Government: the responsibility model, the activity model and the purpose model.

The responsibility model means that only utterances conveyed in mass media and for which someone takes clear responsibility are given constitutional protection. The activity model takes its starting point in that utterances conveyed through mass media companies deserve particularly strong protection, and that other utterances conveyed in mass media can be given protection if ‘responsibility information’ is indicated. The purpose model is built on what can be considered the purpose of a particularly strong freedom of expression – that is, utterances with certain particular indicated purposes such as formation of opinion or journalistic, literary or
artistic purposes. Constitutional protection is given to these utterances if they are conveyed in mass media.\textsuperscript{78}

In the subsequent debate, the purpose model met with unambiguous resistance. It was considered incompatible with Swedish legal tradition, with its dependency on a review of the contents of the utterance. The activity model also met with criticism, while the responsibility model received greatest support.\textsuperscript{79}

The continued work of the Commission concentrated on a solution combining elements from both the responsibility and the activity models. A draft of a new constitutional law on freedom of expression with technology-independence to the greatest degree possible, was established. It would cover mass media companies and mass media with automatic and voluntary constitutional protection, respectively. The parliamentary members of the Commission, however, did not support this proposal; it would be brought up only in the reservation of the Chair – Justice of the Supreme Court Göran Lambertz – against the opinion of the majority.\textsuperscript{80}

\textbf{The Commission on Media Constitutional Law}

The work on a new mutual constitutional law on freedom of expression has been discontinued. Instead, the Commission on Media Constitutional Law has been tasked with conducting a review of the Freedom of the Press Act and Fundamental Law on Freedom of Expression that involves considering moving the detailed provisions from constitutional laws to general law. In that connection, the Commission has also worked more on certain factual matters, including the application of the database rule and the issue of international legal assistance.\textsuperscript{81}

\textbf{Does constitutional regulation conflict with the EU system?}

One particular issue that was part of all the research work dealt with in the previous section concerned how Swedish constitutional regulation in the area stands in relation to EU membership.

Chapter 10, Article 6 of the Instrument of Government decrees that Parliament may transfer the right to make decisions that “do not affect the basic principles by which Sweden is governed” to the European Union. The decree continues by indicating two further conditions for transfer, namely that protection of freedom and rights in the union corresponds to that given in the Instrument of Government and in the European Convention.
In its legislative history, the Government stated that transfer of the right to make decisions could not take place without amending the Constitution to the extent that the provisions of the Instrument of Government on the foundations of the form of government cease to be valid.\textsuperscript{82}

In legislative matters, however, the Committee on the Constitution also stated that the position of Parliament as the primary state body must not be allowed to be undermined to a significant degree by transferring competence to set standards, and that fields that cannot be considered for transfer included areas with provisions that support the fundamental principles of our constitutional system. In this connection, the Committee indicated the great significance of the free formation of opinion for our form of government. Other fundamental principles mentioned by the Committee included the Principle of Public Access to Official Documents, the freedom to communicate information, the prohibition of censorship, the protection of information providers, the system of responsibility and other important principles in the Freedom of the Press Act and Fundamental Law on Freedom of Expression that exert great influence on the free formation of opinions.\textsuperscript{83}

The Committee on the Constitution discussed the problem of what would apply if the EU adopted rules that appear constitutionally unacceptable from the Swedish side. According to the Committee, this should not be regarded as a conflict between Union law and national law. Instead, the issue was whether the Union body had the right, with consequences for Sweden, to make such a decision and if the judicial act lay within the area in which the right to make a decision had been transferred. If the judicial act lay outside this area, it was not valid as Union law in Sweden, the Committee stated.\textsuperscript{84}

One controversial issue that arose later concerned the issue of court and government authority right of review in this context. In 2008, the Commission on the Constitution studied the issue and concluded that the Instrument of Government does not obstruct a review, by courts in Sweden, of the compatibility of an EU legislative act with the conditions of transfer.\textsuperscript{85}

The EU court, however, has stated that it ultimately determines the meaning of Union law, and the rights to make decisions that have been transferred. This interpretation has, however, been questioned in a number of member countries (the Solange Cases).

As far as freedoms of the press and of expression are concerned, this problematic area has been handled by the both the Working Committee on Freedom of the Press and Freedom of Expression and the Commission on Freedom of Expression. It has also influenced the work of the Commission on Media Constitutional Law as concerns international legal assis-
tance, and the assessment has been made that the area of conflict has increased, and that less-detailed constitutional protection in the area would reduce the contradictions. Parts of the protection, however, would then fall away or be weakened, and the scope become less predictable. The advantages of a national “separate solution” have been maintained by these Commissions.

This outlook has also been confirmed in the past few years by the Committee on the Constitution in a case concerning the subsidiarity review of EU regulation of drug information.86

Within judicial doctrine, the problem has recently been the subject of a lively debate starting from the fact that the Swedish model of regulation in the area of freedom of the press and freedom of expression has been questioned at its heart. The critics, both lawyers with a great deal of experience in issues of legislation in the field of EU law, argue that this is a political problem. The work of negotiation on various issues is constantly disrupted by objections made from the Swedish side with regard to the position of freedom of the press and freedom of expression as constitutional law. According to these critics, new constitutional regulation is required with complete consideration of the fact that Sweden is a member state of the EU. Furthermore, reinforcement of the protection of privacy is necessary owing to the requirements of the European Convention. This criticism has been answered by another EU expert who sides with the attitude of the Committee on the Constitution on this issue. For his part, Justice of the Supreme Court Göran Lambertz, the Chair of the Commission on Freedom of Expression has acknowledged the problem that detailed regulation may require constitutional amendments in the event of new EU requirements, but argued that this is not such a great problem that the linchpins or the rest of the detailed regulation ought to be discarded. In his opinion, what should be retained at constitutional level is a question that should be carefully considered when new legislation on freedom of expression again becomes of interest. 87

As regards the position of the Swedish Principle of Public Access to Official Documents, protected by constitutional law, see the articles by Nils Funcke and Helena Jäderblom.

By way of conclusion, a debate article by political scientist Sverker Gustavsson should be mentioned in this context. He reminds us of the experiences from the tug-of-war over freedom of association on the labour market (the Vaxholm Case) and warns against an entire new regulation of freedom of the press and freedom of expression. The reason for this assessment is that there is no experience from member states of what it means to actively constitutionally legislate in conflict with the interpretation of EU
law by EU bodies. He therefore recommends a system in which the current regulation is patched up and repaired. In its defence from the Swedish side, references to ancient practices and national characteristics can be used.\(^{88}\)

**Conclusion**

As we have seen, constitutional regulation of the freedom of expression has become the subject of turning points and dramatic conflicts several times over the course of its historical development, ever since the concept was invented by the younger Caps during the Age of Liberty. In Sweden, this has provided important experiences and serious lessons concerning one of the most central freedoms of a democracy. As time went by, a strong defence of the prevailing detailed constitutional regulation in this field was established, chiefly among politicians, media representatives and public debaters. The role of the legal profession has been to contribute their judicial analyses of the design of the regulation.

However, the situation of freedom of expression is also quite practically characterised by opportunities for establishment and conditions on the market as well as, to a certain extent, by the requirements that state powers impose from time to time outside the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. Press support, of course, is not a part of the constitutional protection. The right to broadcast radio and television programmes over terrestrial networks is not covered by freedom of association in the Fundamental Law on Freedom of Expression, but is regulated by permits stipulated in legislation on radio and television. Time-limited broadcast permits apply to public service, from now until 2019, with conditions and guidelines for the content of the activities and financial requirements determined by Parliament.

The functionality of the system under the ever-greater influence of new technology and globalisation is maintained using complicated legal solutions. The latest integrated political position on the issues in this area is covered by the work of the Commission on Freedom of Expression. It is to continue with partial solutions as part of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, even though there is clear awareness of the increasing difficulties and the necessity of reform in the area. At the same time, it can be stated that the courts have now moved their positions forward. The courts’ expanded right of judicial review, and their increased experience in application of EU law and the European Convention, may provide them with good opportunities to be responsible for the long-term application, governed by law, of the central legal principles
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of freedom of expression even in the event that constitutional regulation were to be decreased or considerably altered. We have, however, been able to learn that the defenders of freedom of expression have long been very keen on limiting the influence of the courts in this area. The last word has not been said, and developments are not written in stone.89
Notes

1 See Chap. 1, Article 1, and Chapter 2, Article 21 of the Instrument of Government.
3 See Chap. 1, Article 2 of the Instrument of Government.
4 See Chap. 2, Section 12 of the Constitution of Finland.
5 See Chap. 2., Articles 1, 20, 21 and 23
6 SOU 2012:55, p. 311.
7 Judgment of the European Court of Justice of 13 May 2014 in case C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González.
8 See https://sv-se.facebook.com/communitystandards/.
10 See article by Helena Jäderblom.
11 See further SOU 2006:96.
13 Chapter 6, Section 73 of the Constitution of Finland.
14 See Chapter 8, Article 14 of the Instrument of Government.
15 See Chapter 8, Article 16 of the Instrument of Government.
16 See Section 14 in the statute with its prohibition against restrictions of freedom of the press.
17 Section 81 of the 1809 Instrument of Government.
18 Memorandum of the Constitutional Committee with proposals for form of government, No. 1, 1809.
19 Lagerroth 1915, pp. 587 ff.
20 See the articles by Hans-Gunnar Axberger and Nils Funcke.
21 Chapter 8, Article 17 of the Instrument of Government.
23 See article by Helena Jäderblom.
24 See article by Lars Magnusson.
25 Wahlström 1914, p. 23.
26 Lagerroth 1915, p. 593.
27 Eek 1943, p. 211.
28 Regarding this section, see references in Hirschfeldt 2009.
29 See Note 30 for references.
30 See Segerstedt 1937, pp. 373 ff. See also Vallinder 2000, p. 37.
31 For an overview, see Nyman 1963.
32 See Note 30 for references.
33 Leopold 1976, Private letter of 9 July 1812 36 (No. 51).
34 Boberg 1989, pp. 35 f.
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38 Memorandum of the Constitutional Committee No. 21, 1853/54.
39 Rydin 1859, p. 111.
40 Rydin, op. cit., p. 200.
41 Petri 2008.
45 Österdahl, 2015.
47 Motion of the first chamber, Parliament of 1940, Nos. 1 and 213.
48 Eek 1942, pp. 8 and 91.
52 Eek, op. cit., p. 281.
56 SOU 1947:60, p. 38.
57 SOU 1947:60, p. 41.
59 SOU 1975:49.
60 SOU 1941:20.
61 Chapter 2, Article 1 of the Instrument of Government.
62 Chapter 3, Act on Freedom of the Press (TF).
66 SOU 2013:79.
71 SOU 2016:7.
72 On 'semi constitutional' law, see Note 24.
73 SOU 2006:96, Part 2, pp. 5 ff.
74 See some fifteen decisions from the Supreme Court of Sweden beginning in 2000 in the registry of legal cases in Axberger 2014, p. 223.
81 SOU 2016:58.
83 1993/94:KU21 pp. 27 f.
85 SOU 2008:125, pp. 499 f.
86 Statement 2011/12:KU5y.
The significance of freedom of expression to a free people – three political periods

Björn von Sydow

Freedom of thought is a fundamental human right. The right to information and freedom of expression allows us into conversations with other people. Writing down thoughts, and being allowed to print and disseminate them to many people, is the next step. Unparalleled technological discoveries during the twentieth century allow us to disseminate and receive through radio, television and the Internet.

Sometimes it is asked: which human right is the most fundamental? The question is whether it actually is the freedom of thought, the freedom of expression and the opportunity to disseminate your thoughts to others. And reciprocally, being allowed to take on board other people’s thinking and expressions through the media. The first academic study, Om yttrandefrihet och tryckfrihet (On Freedom of Expression and of the Press), by H. L. Rydin from 1859, formulates it beautifully:

Freedom of the press is the strongest lock and key that society possesses against everything where the idea is to disrupt its peace; it is rightly said: Take away this freedom and every other freedom will wither away, indeed society as well; let there be freedom of the press, and even if all other freedoms lack guarantee, they would be reborn one after the other.¹

Celebrating freedom of the press after 250 years is well justified. This jubilee publication has provided us with much previous and new research and discussion. In my contribution, I wish to focus on the preconditions for freedom of expression in the media in three periods when freedom was balanced against other demands. To a considerable degree, this is a question of politics. It is how freedom of the press was established between 1760 and 1830, the threat of the Second World War from 1938 to 1944, and the Internet and freedom after 1990.²
Björn von Sydow

Freedom of the press is established

*Enlightenment and control*

In this book, Jonas Nordin writes that freedom of expression, which was unknown in any country at the dawn of the eighteenth century, was regarded at the end of that century as a fundamental human right. Societal evils could be criticised and checked through freedom of thought and of expression. In his analysis of freedom of expression, Nordin also states that the parliamentary nature of Sweden during the Age of Liberty (1720–1772) allowed divergent opinions to be put forth in matters of national politics, and that great thoughts could therefore be hidden “in pedantic, detailed motions on questions of realpolitik”.

Swedish politics was radicalised under the influence of the Enlightenment. The Parliaments of 1760–62 and 1765–66 illustrate this. It was here that Sweden’s – and consequently also Finland’s at the time – first Act on Freedom of the Press was enacted. The decision-making process was parliamentarian. The Hats had been governing since 1738 through their principal majority position in the four Estates of Parliament and on the Council of the Realm.

In this book, Marie-Christine Skuncke shows that the previously dominant tendency towards secrecy (for parliament itself as well) and pre-censorship began to be questioned in the middle of the 1750s. She sums up a crucial element in the Hats’ view of their own power. The estates were not answerable to the electorate. “The doctrine that Members of Parliament should be answerable to their electors, or ‘constituents’ – what was known as the ‘constituent theory’ – had been declared illegal by the governing Hats, and its advocates punished.”

Pre-censorship also prevailed; a censor read through all documents intended for print, and all imported documents. The censor, however, began to waver in his faith and in the mid-1750s as new thoughts began to assert themselves, including Peter Forsskål’s book from 1759. It was confiscated, however, by the Hats through the Chancery College. Anders Nordencrantz became an important force in the Parliament of 1760–62.

He directed his unsparing criticism towards the judges who could not be dismissed, the corruption and the regime of secrecy of the Government and Parliament. He opposed the constituent theory and wrote in Swedish. He pleaded for state documents to be made public and printable. During the Parliament of 1760–62, freedom of the press would be handled in the Grand Special Committee, a (sub)committee created to deal with the issue of freedom of expression. They wanted publicity of documents, except in
The significance of freedom of expression to a free people

The Council of State. Censorship would remain. But the matter came to nothing. The regime of the Hats did not want it.4

The Parliament of 1765–66 was instead dominated by the Caps, the former opposition party. The Rector from Gamla Karleby in the Estate of the Clergy, Anders Chydenius, was elected to the Third Committee, or Committee on Freedom of the Press. A group of politicians from Finland from the Caps became an important force. Chydenius played a crucial role, both for the form of freedom of the press and in attaining a majority for the abolition of political censorship. Church censorship, on the other hand, was allowed to remain. At that time, Parliament and its committees made decisions by estate. The Burghers and the Peasantry in the committee voted for a reform. The Clergy were split and the Nobility voted against, but with two of the estates voting “no” and only one voting “yes”, the position of the Committee towards political censorship was ‘no’. The Caps in the estates tended to be for it and the Hats against, but the differences among the estates was equally as important, Pentti Virrankoski writes. In the Grand Committee, and later on in the autumn of 1766, the proposal was approved by three of the estates: the Clergy, the Burghers, and the Peasantry. The Nobility, on the other hand, were against the Principle of Public Access to Official Documents and for the preservation of censorship.

In this book, Rolf Nygren emphasises that the establishment of the Freedom of the Press Act was an outflow of other, equally strong, polit-
ical changes such as the freedom of the press itself and the Principle of Public Access to Official Documents. It was the criticism of the Hat’s economic policies, and then the unsuccessful war in the mid-1750s and their efforts to prevent social transformation in Sweden at that time. It was also a further development of the constitutional responsibility that took place in Parliament, from a legal review of councils of state to the question of political confidence in Parliament as concerns this responsibility.\(^5\)

The Government promulgated the Act on Freedom of the Press on 2 December 1766. It was given the position of constitutional law. The Council of State was now dominated by the Caps. There is no royal signature in the King’s own hand on the decision. Nothing is known of King Adolf Fredrik’s opinion.\(^6\)

The Act is modern in the content of its thoughts, argues Hans-Gunnar Axberger. But it was more poorly organised with its roots in the politics of law and ideas. There was no broad unity behind the new system. The House of the Nobility did not have a majority.

Conflicts and ‘mild dictatorship’

The Freedom of the Press Act led to an enormous growth in printed documents. Newspapers, public documents and so on poured forth, writes Skuncke. The battle for privileges predominated, and the debate was radicalised. The three commoner estates questioned the privileges of the Nobility – chiefly the sole right to higher civil and military office – in pamphlets and newspapers. After only a few years, the sitting regime of the Caps began tampering with the new legislation.\(^7\)

In 1772 the political revolution of Gustav III lowered the level of the Age of Liberty, and meant that the freedom of the press was gradually restricted through a series of royal decrees: 1774 and 1780, indirect censorship via printers; 1785, power of confiscation; 1788, the Act of Union and Security; and 1791, the prohibition on publishing Parliamentary documents. It is true that Gustav III stood for the first steps of freedom of religion, and he supported literature and the arts, but expressions of these had to have his stamp of approval. In this book, Skuncke writes that the Gustavian regime was a relatively mild dictatorship compared with the totalitarian systems of today.\(^8\)

The assassination of the King in 1792 did not lead to any decisive change. Several political periodicals were once again published. The Reuterholm Regency regime attempted to ease the restrictions imposed by Gustav III but soon resumed them. When Gustav IV came to the throne in 1796, re-
strictions on freedom of expression and freedom of the press were further extended through measures such as new prohibitions on printing public documents and prohibitions on importing French books and newspapers. In the years around 1800, censorship on political issues prevailed in practice in order to prevent the “French infection”.

Groups of resisters, however, were formed in those years of repression known as the ‘Iron Years’. They were united in criticism against the prevailing repression, but were also in varying degrees of conflict with each other. This applied to Johan Henrik Kellgren, Carl Gustaf Leopold, Thomas Thorild, Axel Gabriel Silverstolpe, Nils von Rosenstein, and Hans Järta and George Adlersparre – the latter two famous in the political revolution of 1809. In other words, there were far-reaching plans afoot at the time in leading intellectual circles in order to restore freedom of expression and freedom of the press of the kind introduced in 1766.³

1809, 1810, 1812 and 1815

The revolution of 13 March 1809 led to a major reform of the Constitution and freedom of the press. In reality, this would be re-established through a letter written by the Council of State and signed on 25 April by the man who would later become Carl XIII. This was how it was interpreted around the country. In Axberger there is the opinion that, regarded objectively, the handling of the issue of freedom of the press after the coup d’état can be interpreted, to all appearances, as a continuous process working up through the Parliament of 1812. A crucial starting point lay in how freedom of the press was formulated in Paragraph 86 of the 1809 Instrument of Government, which was established on 6 June 1809. Here, the principles from the Freedom of the Press Act of 1766 were clarified – prohibition of censorship by public government authorities (Church censorship was not mentioned and was later formally abolished). Furthermore, responsibility only post event before a lawful court and the Principle of Public Access to Official Documents – that is, the right to print documents and Minutes – with a few exceptions. The principles were newly established here. It is said that Leopold was the author.

I will not recount the detailed research that people such as Axberger and Hirschfeldt have carried out; and the same for older research. The authors agree that the Freedom of the Press Act of 1810 did not become a completely solid product of legislation. The political situation was also aggravated in 1810 by the sudden death of the Danish heir to the throne – the Fersen murder in Stockholm Old Town – and the dangerous international
situation. The Swedish press risked attracting threats against Sweden from the Great Powers.

Jean Baptiste Bernadotte was elected heir to the throne by the Parliament in Örebro. Later in the year, the Committee on the Constitution declared itself in favour of a revision of the Freedom of the Press Act. Bernadotte would come to act powerfully on the issue of freedom of the press. He let it be understood that he could abdicate, in a critical situation for the Kingdom. As is known, the result was that Parliament changed the Act on Freedom of the Press through a decision. Above all, the Government power of confiscation was introduced. Publishing a periodical newspaper required a permit granted by the Court Chancellor in the Council of State. This permit could be withdrawn according to very open criteria. In many respects the Freedom of the Press Act of 1810 remained in its essentials, but it was adopted as the Freedom of the Press Act of 1812 without it being declared dormant between two Parliaments, as the Instrument of Government prescribed. On the other hand, a proposal for juries in press libel cases was adopted pending decision. This was finally determined in 1815.

The legal preconditions for Swedish freedom of the press were thereby prepared. The Napoleonic Wars and the consequences of the French Revolution were also brought to an end, and in many cases accepted. The state system was restored, but the legal system turned out to have been permanently changed in the new Sweden. Even under Bernadotte, Swedish royal power was not particularly effective against freedom of the press.

Power of confiscation not a success

It was up to the Government – that is, the King in the Council of State – to decide whether the publisher of a newspaper that had been confiscated should also be prohibited from publishing new periodical documents. It became, as Axberger writes, something of an Achilles’ heel. The prohibition was directed at people, but not at the document itself. This could be easily modified and published again. So, for example, when *Aftonbladet* was modified to *The Seventh*, *The Eighth*, and so on to *The Fourteenth Aftonbladet* by Lars Johan Hierta, who was its actual publisher the entire time. There were opportunities to confiscate the edition, but with delays, and by then the edition had already been distributed and read.

Confiscations occurred some sixty times between 1813 and 1838. They were often related to defamation. What was protected was foreign relations, especially with Russia, and Karl XIV’s own authority. Most of the civil servants who came to be involved with the measure appear to have
been critical, writes Stig Boberg (1999). The confiscations were regarded by many as arbitrary. He also argues that the driving force behind the confiscations and power of confiscation was the King himself. This was abolished during the Parliament of 1844, the same year Karl XIV passed away.

Axberger argues that there were effects that grew from the power of confiscation – adaptation, for example – but that they have been exaggerated. It brought no informal censorship.\footnote{11}

**Public access to documents a success**

The positive regulation in Paragraph 86 of the Instrument of Government and the Freedom of the Press Act stating that all documents and records – with specific exceptions – “may unconditionally be published in print” was subsequently complied with from around 1820. Rolf Adamson shows this in his work *Reformivriga tidningar och svårflörtad överhet: Stockholmspressen och den högre förvaltningen under 1820-talet* (Reformist Newspapers and the Hard-to-please Powers-that-be: The Stockholm Press and Higher Administration in the 1820s). Newspapers and periodicals such as *Argus* could procure documents that the newspapers could use as journalism concerning errors of judgement, injustice or laxity in administration. This applied also to the records of the Council of State. Now they adjusted to a new situation. This concerned the parliamentary auditors. It concerned county administrative boards and governors. It concerned jails and prisons. Adamson concludes that it is possible to speak about a significant shift in behaviour among the leading newspapers of Stockholm around 1820. This was a type of journalism, in certain papers, that above all did not concern reporting “exciting documents, but influencing the political opinion of its subscribers...”. The most outstandingly important entity was *Argus*, with an edition of not more than 2,000 copies.\footnote{12}

**The jury and a final payment**

The background to Parliament introducing a jury system in connection with press libel crimes in 1815 is not completely clear. The research by Vallinder, Boberg and Axberger seems to lean towards the distrust that met the dependence of the civil servants and judges on royal power, which had control of promotions and other matters. The politicians here wished to participate in guarding the limits of freedom of the press from various perspectives. One solution for this was found in the 1809 Instrument of Government, which, however, never became an effective instrument. On
the other hand the jury, tasked with acquitting or convicting in connection with legal action, would come to function in a rather unpredictable manner for legal praxis. Which perhaps was one of the intentions behind its establishment? The system would be defended by the press and liberal politicians against conservatives. The instruction given in Chapter 1, Article 4 of the Freedom of the Press Act (and Chapter 1, Article 5 of the Fundamental law on Freedom of Expression), which emphasises acquittal rather than indictment, has often been linked to actions brought up before a jury.\textsuperscript{13}
Three of the most prominent cultural figures of the nineteenth century were indicted for crimes against the Freedom of the Press Act, as Carina Burman writes: Erik Gustav Geijer, August Strindberg and Gustav Fröding. All of them were acquitted by their respective juries. The Court Chancellor had Geijer indicted. Events like this took place after consultation with the King. In 1819, this was Karl XIV. There is strong evidence that Oscar II was personally behind the two later actions, Burman says by way of summary.

Oscar I was behind an attempt to scale down constitutional protection for printed documents. This was through a bill to the Parliament of 1853–54. It was accepted pending decision, but during the next Parliament (1856–58), opinion had turned and the bill was rejected. Axberger and Vallinder see this as a late attempt to once again increase personal royal power. The road now lay more open to a representation reform of Parliament, and from that a parliamentarisation of the form of government.14

This defeat and the decisions of the juries in the three cases illustrate that, ever since 1766, freedom of the press (with all its subsequent touch-ups) in many respects dealt with a conflict against personal royal power.

From 1820, newspapers made use of the relevant documents in courts and government authorities. There was no pre-censorship. The power of confiscation turned out to be circumventable, and was abolished in 1844. The jury system limited interpretation of the law by judges.

What we from this point forward regard as Swedish normality in the area of freedom of the press has been established.

The period from the end of the 1880s up until the First World War and the democratisation of the right to vote involved increased antagonism. This came above all from the trade union and socialist goals of the workers’ movement. Polarisation of society increased. In her doctoral thesis, Katarina Alexius studied the verdicts of the Swedish Supreme Court in this type of case and also describes how government agencies and lower-level courts acted.

When Sweden’s Social-Democratic Workers’ Party was formed in 1889, legislation was quickly implemented aimed at preventing exhortations to disobedience of the law and legal authorities, and agitation that entailed threats to the maintenance of society – known as the ‘muzzle law’. However, Alexius argues, Hjalmar Branting’s sentencing in 1896 for an alleged crime in this direction – for his statement in a May Day speech – is almost an exception. The reformist workers’ movement would, on the whole, not be affected by this law; it was applied to more extreme socialists and anarchists. It was also applied, to a greater extent, against antimilitaristic propaganda.
The ‘Åkarp Law’ from 1899 was directed against threats and compulsion concerning agitation to strike, however according to Alexius it led to few cases, even during the general strike year of 1909. When the Freedom of the Press Act with the jury system was applied, it led to significantly more cases being rejected when compared with the penal code.15

The threat of the Second World War

The National Government and freedom of the press16

Sweden would not be drawn into the Second World War. But Sweden’s constitutional development, freedom of the press – indeed, freedom of expression in its broader meaning – was severely affected. One element was that, in connection with the outbreak of the Winter War, Sweden’s Hanson Government was re-organised from a coalition government between the Social Democrats and the Farmer’s League into a government where the Right Party and the Liberals were included – a genuine National Government. This meant that only the Communist Party, with its few mandates and low level of support among the voters, stood outside Government. The Parliamentary opposition was thus very substantially reduced, however there was criticism in all government parties on various points of the National Government’s policies.

In the autumn of 1938, the newspapers were filled with criticism of Germany and Hitler, as Nils Funcke writes in this book, and the Government became worried – especially due to some articles in the newspaper Social Demokraten. Prime Minister Per Albin Hansson and Minister for Foreign Affairs Rickard Sandler wrote a confidential letter to editors-in-chief around Sweden. The letter said that in order for the Government to be able to keep Sweden out of a war “with as little friction as possible”, one important condition concerning the press was “that legitimate suspicions could not be directed towards Sweden for taking sides for or against one power or group of powers or another”. This did not mean that the media should not critically review and comment on the conditions in other countries, “[b]ut criticism of this kind can no doubt be exercised under proper consideration of this country’s interests”, the Ministers explained, and warned against “statements too passionate or too rash”.

As a result of the outbreak of the Second World War in 1939, the attitude put forward by the Government back in 1938 came to be the foundation of a press policy that Nils Funcke – after a study of Swedish measures, and an attempt to classify them according to various ‘press ideologies’ – calls “the
social ideology of responsibility, but with strong features of authoritarian ideology”.

The National Government and the four Parliamentary parties that formed the party base in Parliament thus built up a system of carrots and sticks. The softer, persuasive function included a series of efforts and institutions to influence, through advice the press, including radio, towards more restrained reporting and assessments of world events, especially concerning Nazi Germany but also other belligerent countries such as the Soviet Union and Great Britain. This involved public appeals from ministers and informational influence exerted on editorial staff from new government authorities, TT and Radiotjänst, which had the radio broadcast monopoly. New public bodies were created that were to bring about restraint by the press at the same time as editorial management would be well provided with information not intended for dissemination.

The other part of Government and Parliamentary policy involved repressive measures against the publication of newspapers that continued to publish articles that could be perceived as insulting to German state leadership and damaging to Swedish policy, above all towards Germany. This initially involved confiscation and legal action against newspapers in accordance with the provisions of the Freedom of the Press Act concerning statements that were “assessments intended to be defamatory, injurious, or in disagreement with foreign powers, or statements about current nations or states with which the Kingdom has peaceful relations”. But since it turned out that legal action in several cases was gradually rejected by juries, other measures had to be taken. When the foreign affairs leadership considered it justified, Minister for Justice Westman began applying a provision in the Freedom of the Press Act of 1812 that most people believed had become obsolete: confiscation without subsequent trial. Chapter 3, Article 9, Paragraph 2 of the Freedom of the Press Act stated that “if the publication is not defamatory or injurious, but a misunderstanding with a foreign power has arisen through the same, it may be confiscated without trial”. The measures were aimed at communist and Nazi newspapers, but also democratically oriented publications. The intervention that attracted the most attention was against Göteborgs handels- och sjöfartstidning, where three days’ issues of newspapers were confiscated in mid-September 1940. Even the pro-Western Trots Allt!, published by Social Democratic member of parliament Ture Nerman, was confiscated on several occasions as well as having legal action taken against it. From 1939 to 1944, a total of 55 legal actions were initiated. From 1939 to 1943, 368 newspapers and documents were confiscated (the majority without subsequent legal action); the greatest number – 145 – was in 1942.
Even the stage and films were subject to interventions; for example Karl Gerhard’s song about the Trojan Horse at Folkteatern in Stockholm in 1940. *Ride this Night!* by Vilhelm Moberg was staged without the references to German bailiffs stated in the original. Charlie Chaplin’s *The Great Dictator* was totally prohibited from public viewing. *Casablanca*, with Humphrey Bogart and Ingrid Bergman, was subject to editing. Agneta Pleijel notes that a total of 59 films were stopped.

Transport ban, pre-censorship and ban on parties

However, the Government and Parliament did not stop there. By way of rapid processing through Parliament, a transport ban was introduced in February 1940. This meant that newspapers that could be detrimental to the security of the Kingdom and were convicted by a court in accordance with the Freedom of the Press Act could not be transported via public means of transportation such as the mail, the railways or the buses. *Trots Allt!* was affected in its distribution outside Stockholm.

In 1940–41, the National Government further proposed constitutional amendments that would make it possible for Parliament – with a qualified majority – to introduce pre-censorship, during a war or in connection with the threat of war. The law would also make it possible to issue a ban on the publication of a newspaper. This legislation was accepted pending decision by Parliament in June 1940 and finally in 1941, respectively. This was one of the points that brought about more extensive criticism in Parliament, above all from the Social Democrats and the Liberal Party.

In 1940, Parliament decided to introduce a law on the dissolution of “associations dangerous to society”. The law would make it possible to dissolve associations that want to change the form of government through violence or support from a foreign power. This prohibition could also affect “associations that seriously threaten the defence of the Kingdom or its relations with foreign powers”.

The censorship law, or law on dissolution of associations dangerous to society, would never be used but the transport ban ordinance, the more stringent application of the rules in the Freedom of the Press Act, and the extensive pressure on the press became realities in the years up to 1944 when the war turned to the advantage of the Allies.17

The press or the Government?

The Government’s foreign policy was conducted under growing external conditions of power – the German, and later also Soviet, invasion of Po-
land; the Finnish Winter War after the Soviet invasion in 1939; and in 1940 the German conquest of Denmark and Norway, its victory over France, Belgium, the Netherlands, and Luxembourg, and the Soviet annexation of the Baltic States. This was part of the sudden Hitler-Stalin alliance in August 1939. Only Great Britain, now under Prime Minister Winston Churchill, resisted Germany militarily. In the summer of 1940, Sweden and Finland then were surrounded by Nazi Germany and the communist Soviet Union, which had concluded an alliance.

Nazi leaders in Germany displayed suspicion towards the Swedish attitude, despite the concessions made by the Swedish state powers concerning transit of soldiers and materiel to Norway after the latter capitulated. In Stockholm, the Ministry for Foreign Affairs became increasingly concerned about the animosity and irritability of the German leadership towards the Swedish press. Leading Nazis spoke aggressively, and on 13 September 1940 Germany delivered a note saying that the continued agitation of Göteborgs handels- och sjöfartstidning against Germany could no longer be tolerated. Determined measures were demanded in order to put a stop to it. This was the background to the Swedish Government confiscating GHT for three days, a few days later following elections to the Second Chamber of Parliament that resulted in an overwhelming Social Democratic victory. Minister for Foreign Affairs Christian Günther argued internally in the Government that this very Social Democratic victory was a reason for intervention: in Germany, this electoral success would be ascribed to a Germanophobic party, and according to Günther it was therefore necessary to at least provide some expression that this government was not Germanophobic. Prime Minister Hansson took the same line as Günther. Diplomats and King Gustaf V emphasised the same thing.

In Svensk utrikespolitik 1939–1945 (Swedish Foreign Policy, 1939–1945), Wilhelm M Carlgren wrote that the question was actually whether German demands for measures against outspoken Swedish newspapers were really aimed at them and their contents. “At that time, it was rather Hitler, Göring, Goebbels and others’ dissatisfaction concerning, above all, the Swedish Government’s press policy – not so much the objectionable content and editing of individual newspapers as the Government’s failure to intervene and show them the way. When the Government finally took appropriately strong measures, the Germans’ vigorous actions were toned down immediately: the new world power’s desire for prestige had been taken into proper consideration and the Swedish Government – even if it was a little on the late side – appeared to realise that world-historic upheavals must make themselves felt even in Swedish freedom of the press.”
The Government continued its press policy in 1941. It handled German complaints about the attitude of the Swedish press with pleas for restraint, which also led to greater insipidity in the press, on the radio and so on. At heart, however, the German complaints dealt more with the failure – real or supposed – of the Swedish Government to intervene against such injurious statements, argues Carlgren.

In the autumn of 1941, the Government was also faced with the issue of actually applying the law against associations dangerous to society. Günther and conservative leader Gösta Bagge wanted to ban the Communists, whereas Social Democrats and members of the Liberals did not. As a partial reason against it, they demanded that if the Communists were banned then so should the Swedish Nazi Party, which the Germans rejected.

The development of the war was crucial here. By the winter of 1941-42, the Germans had not reached a decisive point in the war against Russia. The United States entered the war in Europe after Hitler declared war in connection with the Japanese attack on the American navy at Pearl Harbour. The question of a ban on parties was allowed to lapse. Barely a year later, German demands concerning the Swedish press were reduced to merely ‘neutrality’.

The Development of the Constitution

The development of the Swedish Constitution was already deeply affected a year before the Second World War. The measures in question, from the Government and Parliament involved significant curtailment of the freedom of the press. They also involved latent opportunities for introducing pre-censorship and a prohibition on certain political associations – parties. The same applied to the ‘transport ban’ ordinance of 1940. These were so extensive that they must be regarded as a revision of the Constitution.

When the war began to draw to an end with Germany’s defeat, the constitutional rules introduced into the Instrument of Government, the applications of the Freedom of the Press Act that had been used, the Transport Ban and the entire system of political management by governmental bodies of the press and the content of the media were abolished. I consider it justified to indicate that the constitutional revision this dealt with included both the changes of 1938–1944 and the reversion and editing of the Freedom of the Press Act that occurred in 1944–1945 that led to the 1949 Freedom of the Press Act now in force. This constitutional revision was thus a long process running from 1938 to 1948.
At various times during the period following the Second World War, the policies of the National government and Parliament have been repeatedly debated. Unsurprisingly without unanimous responses, as Agneta Pleijel writes.¹⁹

In fact, two different assessments of the title of this section – “The threat of the Second World War” – stand opposed to each other. Was it really the Nazi threat from Germany? Or was it the threat of the National government – indeed, the curtailments carried out on freedom of expression in Sweden?

And was the purpose of these curtailments to show the German state leadership that Sweden’s government now understood that “a reasonable respect for the state of affairs” outside their own borders was required, as Wilhelm Cargren writes? Yes, he argues that. When these events took place, no greater German demands were harshly enforced.²⁰

But the sense of self-determination of a free people was affected, I would add. Realpolitik or democracy? There was that tension among the people, and in the National government itself as well, as Alf W. Johansson shows.

And what should we do if, now or sometime in the future, we are faced with other great external threats? Our constitutional laws of today, including the 1949 Freedom of the Press Act, provide us with few opportunities in a crisis situation to limit internal freedom of expression in the face of major external threats. This is the legacy of the curtailments due to German threats in the Second World War. Article 10 of the European Convention, however, does not rule out a consideration of this kind as this had been the experience of the war-torn democracies. Article 15 also grants states the right, during a war or other emergency situation threatening the nation’s existence, to take measures that deviate from the Convention.

In her contribution to this book, Agneta Pleijel sees how today’s world finds itself in a labile condition, and partially in chaos. The January 2015 attack in Paris was terrorist violence for ideological reasons, directed against freedom of expression. Democracy, freedom of expression and open society find themselves suffering through more difficult ordeals than there have been for a long time.²¹

The Internet and freedom

*Round trip to Europe*

The considerations between freedom of expression and the limitations on it have been moving between Sweden and Europe, and in opposite directions, since 1990. Helena Jäderblom emphasises how great the influence of the
Swedish Principle of Public Access to Official Documents now is in Europe. It has been applied within the framework of the European Council, where a series of instruments have been negotiated. Today there is a convention on public access to documents that has not yet been ratified by a sufficient number of countries. This European Convention is now being increasingly applied by the European Court of Human Rights in Strasbourg. The Court has established that, in certain situations, not distributing information from government authorities entails a curtailment of freedom of expression.

EU institutions and the EU Court of Justice have also moved in a similar direction; Sweden’s actions from the day it gained membership in 1995 have played a major role here. Jäderblom herself has been involved in these decision-making processes, which culminated with the Public Access Regulation of 2001 during the Swedish Presidency of the EU. However, she notes a certain stagnation in development.

At the same time, both she and Nils Funcke find that influences from the EU on Swedish legislation are negative as regards certain parts of public access to documents. They note that Parliament has decided that, as of 2014, there will be a new opportunity to classify information that is submitted to a Swedish government authority, if it could be assumed that Sweden’s opportunities to participate in the intended international collaboration would change for the worse if the information were revealed. Freedom to communicate information applies, however. I would argue that the new aggregate image is still tipped in favour of public access to documents. It has exerted a much stronger effect on European law in comparison to the previous dominance of the British and continental principle of secrecy.22

The Fundamental Law on Freedom of Expression

The Fundamental Law on Freedom of Expression, in force since 1992, is based on the Radio Responsibility Act of 1966. Before this, there was no equivalent of the Freedom of the Press Act for media parallel with printed documents. The Fundamental Law on Freedom of Expression, was created
to be a copy of the Freedom of the Press Act. Bertil Wennberg provides an account of how the new fundamental law is to be understood. In doubtful cases, the Fundamental Law on Freedom of Expression is to be interpreted in analogy with the Freedom of the Press Act, whereas the Freedom of the Press Act should not be interpreted with the aid of how a similar case was resolved within the Fundamental Law on Freedom of Expression.

Thus far, the Fundamental Law on Freedom of Expression is very difficult to read independently, since it refers so often to the Freedom of the Press Act. With the Fundamental Law on Freedom of Expression, Sweden has thereby been given two parallel technology-dependent laws on freedom of expression. The Freedom of the Press Act applies to printed documents. The Fundamental Law on Freedom of Expression applies to radio, television, and certain other similar transmissions, public playback from a database and films, videograms, sound recordings and other technological recordings. In these media, every Swedish citizen may “publicly express thoughts, opinions, and feelings, and otherwise present information on any subject whatsoever”. The most important fundamental difference between the fundamental laws is that where broadcasts over air are concerned, permits for frequencies based on international agreements must be obtained from a public authority. Cable-based transfers, on the other hand, take place on the same fundamental basis as printed documents (newspapers for example), that is, freedom of establishment and competition prevail. The Fundamental Law on Freedom of Expression protects the possession of radio receivers and similar devices.

The digital breakthrough

The first application of the World Wide Web took place in 1989. Starting in the mid-1990s, the WWW began to become a fundamental component in the development of the Internet. Social media is a new umbrella term for a combination of online users and content. 1992 is the debut year for SMS – Short Message Service – and texting as a mobile phone service. The actual user breakthrough also occurred in the mid-1990s.

The early 1990s were thus the prelude to digital technology – Internet, computers and mobile phones – as the tools of every individual. The issue became how these media-borne expressions are to be regarded, assessed and managed as regards their content. In Sweden they do not lie, in principle, within the area of expression regulated by the Freedom of the Press
Act or the Fundamental Law on Freedom of Expression. But matters are complicated. Forms of technology are mixed.

The legislative history and the later adjustments in the Fundamental Law on Freedom of Expression were based on an insight into what was in the wind. A regulation came in Chapter 1, Article 7 of the Freedom of the Press Act. The person responsible for a printed document will also be responsible for it in an audio version. But the person who reads how authors such as Wennberg et al. tried to clarify how the new information technology, or IT, was protected and regulated in the Fundamental Law on Freedom of Expression and Freedom of the Press Act, respectively, must see how complicated the regulation of the freedom of expression would become when it is dependent on the technology in which it appears.23

The database rule

One central regulation in the Fundamental Law on Freedom of Expression concerns databases. These may be built up by newspapers and other media companies. Consumers can go in, read and retrieve material from them. These databases may be awarded constitutional protection by Chapter 1, Article 9 of the Fundamental Law on Freedom of Expression (2015) on the condition that the editorial staff make, and are responsible for, all content. This was expanded in 2003 so that other websites were able to obtain protection and state responsibility if they were registered for a certificate of no legal impediment to publication. The list of crimes and the process in the Freedom of the Press Act or the Fundamental Law on Freedom of Expression, which set the threshold high for the responsible person being indicted for a crime, thereby apply. However, there are many interactive websites where readers make contributions. They, and the setting of other boundaries, make it uncertain whether this type of contribution is awarded, or should ever be awarded, the higher level of protection that the Freedom of the Press Act or the Fundamental Law on Freedom of Expression grants them. If this is not the case, they can be indicted according to the rules stated in the Penal Code. However, this rarely occurs. It is problematic that they may contain threats or hate propaganda, for example, which could harm other people.

Databases at government authorities were noted early on as a risk element. Could ADB-based information (using the abbreviation of the time), with personal ID numbers as a basis, be used by government authorities in a way that did not correspond to the reason the information was collected? Could government agencies sell data information without the individual’s
permission (and without receiving any compensation)? And did public access to documents apply in accordance with the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, so that commercial entities could obtain and sell information from public registers? Through legal decisions, it turned out that the provisions of constitutional law on access to official documents had greater influence than the general legislation of that time on the matter (the Data Protection Act, with the Swedish Data Inspection Authority as the controlling authority). The courts and, gradually, the Parliament in Sweden set Swedish constitutional law before the EU Directive that would regulate conditions in a more restrictive direction, to the advantage of the individual.

Over the last few years, the Lexbase database has brought these issues to the fore. Lexbase scans court verdicts and anyone may go in and search in various ways. People can pay their way to more extensive, only partially de-identified, information. Lexbase has obtained authorisation to publish and is thus constitutionally protected, with the higher thresholds. Do we prioritise the personal privacy of a person named in a verdict, or public access to documents compiled in a data register?

And this opens up the question of the protection of personal privacy for individuals in databases, on social media and in traditional media. Perhaps less, if someone is a public figure with power and particular responsibility in the life of society? But more for an individual without much power or responsibility? Can there be different degrees of protection of personal privacy?

Protection of privacy on the Internet is a tricky issue. Are certain parts under the stronger protection of the constitutional laws, while other parts lack this protection and are thereby easier to attack legally?24

Commission, but ...?

In 2006, a Government Commission – Tryck- och yttrandefrihetsberedningen (the Working Committee on Freedom of the Press and Freedom of Expression) – presented a report. Where did the problems lie? They focused on the fact that our two fundamental laws on freedom of expression are technology-based: the Freedom of the Press Act on printed documents, and the Fundamental Law on Freedom of Expression on technological recordings. One problem is that mass communications with new technology may fall outside both laws. This was surmountable, however. The difficulties were above all the issue that the two fundamental laws were to regulate and protect statements that were disseminated to the general public. It was important to resolve the difficulties by determining whether or not constitutional protection applies
when technological recordings lack information about their origins, and by establishing the circulation of a technological dissemination. It should be media-borne. Dissemination in a smaller circle does not count. From this, and a few other minor issues, the Commission sketched out various alternatives to each radical reshaping of the design of the legislation. It should be added that there actually was great sympathy for retaining the prevailing system in the Commission. The proposals sketched out dealt with three alternatives to the prevailing, quite recently-established, system with two special parallel laws as well as fundamental direction in the Instrument of Government.

The minimum alternative would entail regulation in the Instrument of Government being expanded somewhat, but otherwise that the legislation would be relocated into general law with approximately the same content as the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. General law would be easier to change, which is not desirable in all parts. Clear judicial review, perhaps a constitutional court, could supplement the process in order to counteract hasty amendments by Parliament. However, the consequence could also be technology-independent legalisation, and thereby more adjustable boundaries between the various degrees of protection of what is to be considered as statements to the general public. Perhaps the freedom to communicate information could be managed differently?

The medium alternative retained more of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, but placed them in a new chapter of the Instrument of Government. A general law would be created – a mass media law – with detailed regulations that Parliament would establish and amend with a two-thirds majority (or as constitutional law – that is, two decisions with a Parliamentary election in between). This would mean that legal praxis could more easily determine which statements would be protected by constitutional law and which would not.

The maximum reform alternative would be placing the Freedom of the Press Act and the Fundamental Law on Freedom of Expression together into a new fundamental law on freedom of expression, with the same objective content as the prevailing system. The merger would reduce the problem of determining whether technological recordings fall under constitutional protection. Perhaps, however, the situation for modern media should influence those of printed documents in a more limited manner? Perhaps because Swedish protection of private life deviates to a certain degree from what is standard in other EU countries (in comparable countries, protection extends further). The legal position in Sweden is explained by public access to official documents. The principal rule in Sweden is public access, even as regards an individual’s personal or financial situation.25
Commission after commission, but ...?

In 2008, the Reinfeldt Government stated that none of the proposals could be implemented. The commission was reorganised into Yttrandefrihetskommittén (the Freedom of Expression Committee). But technology-independent constitutional legislation in these areas could still be examined. This round resulted in a sketch of principle for three different models – the Responsibility model, the Activity model, and the Purpose model.

The Responsibility Model won the most approval in the subsequent debate, but received criticism too. This led to the Committee choosing to have a new fundamental law on freedom of expression worked out on the basis of the three models that could then replace the Freedom of the Press Act and the Fundamental Law on Freedom of Expression now in force in a technology-independent manner. However, in the end, the Committee itself rejected this proposal, including its lines of argument concerning sole responsibility and protection of sources. The Committee was unanimous on this with the exception of its Chair, former Chancellor of Justice Göran Lambertz. He put forward his own proposal for a new technology-independent fundamental law on freedom of expression and a constitutional statute on the protection of private life, which could lead to various images, films etc. published in constitutionally protected fora becoming indictable.

The Government chose not to take up the main issues concerning one or more constitutional laws either, but stopped at the few proposals that were brought before Parliament.

In this book, Per-Arne Jigenius argues for a technology-independent constitutional law. It is above all the press, he says, that has acted against an integrated fundamental law on freedom of expression. He has held positions such as editor-in-chief, legally responsible publisher and Press Ombudsman (that is, he was at the head of the voluntary ethics review that has been built up over the last one hundred years or so). Jigenius believes that the Swedish press has also rejected one corresponding ombudsman for media-borne and digital technology. All due deference to the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, but there is a downside, he writes. Far too many individuals are subjected to abusive assessment. Many individuals find it difficult to accept that their names are found on questionable websites, with constitutional protection. Jigenius’s text leads to additional questions outside of what he explicitly deals with. In his essay in this book, Martin Scheinin shows the same contradictions and turning points on the part of Finland. The principles from 1766 appear anachronistic in a digital environment.
Do we need the one-sided role of responsibility now, or can we divide it up, as they do in our neighbouring countries? Do we need two fundamental laws? Do we need all the details in constitutional form? Do we need to regulate what is just and unjust concerning statements that today are thought to lie outside the particular protection of publicity in our two fundamental laws on freedom of expression? Should the ethics in all media-borne statements be reviewable under similar conditions? We may well ask ourselves this, in this Internet age.27

Here I stand; I cannot do otherwise

During my political science activities as a teacher and researcher, I have never actually studied freedom of expression and our special Swedish fundamental laws on freedom of expression in detail. I have taken them for granted.

In the 1990s, as a Social Democrat, I was part of the Fri- och rättighetsskommittén (Commission on Freedom and Rights) which prepared the incorporation of the European Convention into Swedish law but I do not remember any particular problems concerning issues of freedom of expression. The same applied, I think, to my years as a newly-elected MP in the Committee on the Constitution from 1994 to 1996.

As Minister for Defence from 1997 to 2002, I remember the difficulties faced by the Armed Forces with the risk of leaks of classified information from their internal data systems. At that time, around 1998, the Government also had to handle conflicts between Swedish and EU rules on public access to official document, but I do not recall any special effort on my part on these points. Nor do I remember any particular management on my part concerning our freedom of expression when I was the Speaker from 2002 to 2006. In short, I actually did not occupy myself with this, either as political science expert or as a politician.

But when I was again elected to the Committee on the Constitution in the autumn of 2012, I noticed certain tensions between the EU and the Swedish systems of public access to official documents.

In the autumn of 2013, I was asked whether I would like to contribute an article to this anniversary book on roughly the same lines as I had written for Maktbalans och kontrollmakt. 1809 års händelser, idéer och författningsverk i ett tvåhundraårigt perspektiv (Balance of power and power of control: the events, concepts and constitutional activities of 1809 from a two-hundred-year perspective). I experienced a few misgivings, since I had never really occupied myself with these areas of politics and political
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science, but I accepted. In the summer of 2014, I began studying literature I had largely never read before. I became very unhappy – how would I be able to do anything about my promise of an article?

At the same time, the Swedish Government at the time mentioned that a new, more limited, commission would be set up concerning the problems that the previous commissions had studied during the 2000s. The Mediegrundlagskommittén (Media Constitution Committee) would modernise the language in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression and try to resolve some of the factual problems that limited the previous commissions, including databases and, through supplementary terms of reference, the question of whether the Freedom of the Press Act’s rules allow prescribing tobacco packaging to be neutrally designed. Since I was the group leader for the Social Democratic Party on the Committee of the Constitution, it was natural that I proposed both myself and other members from our side for the commission. I felt that I would – finally – have a substantial opportunity to learn something new that I had previously overlooked. And I did.

The Media Constitution Committee was initiated after the 2014 election with Justice of the Supreme Court Anders Eka as Chair, representatives of all parliamentary parties, a large secretariat and many experts.

There was much that surprised me: that the information found in the terms of reference required such enormous amounts of preparation and review – hours and hours, over full days; that the Freedom of the Press Act was so detailed and the Fundamental Law on Freedom of Expression was so difficult to read; that there were so few legal cases, despite the enormous selection of media now; that people such as our experts were therefore finding it difficult. During one meeting of the commission, on 31 August 2015, I took the opportunity to ask our secretary, Daniel Gustavsson:

“How many people are there in Sweden who have a good grasp of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression – 25 or 60?” He counted, seriously, and came up with 30 people! And this is in other words the basis of two of our fundamental laws...

Many of them are experts here [in our committee], not very many more there are. I could almost say that Freedom of Expression is bound in its old forms and maintained by these 30.”

as I wrote in my diary.

And to think that the two previous commissions had worked so solidly, and still practically nothing came of it, despite the issues of technology-independent regulation of all expressions disseminated through media appearing to be serious and meaningful.
In the commission, I asked, naively and uninformed, how our neighbouring countries Finland, Denmark and Norway solved their similar problems. In the summer of 2015, when I was studying the issue in more detail, my eyes were opened.\textsuperscript{28}

\textit{Thomas Bull seeks and finds}

In connection with the study that submitted its proposals in 2006, former associate professor Thomas Bull – now Professor and Justice of the Supreme Administrative Court – conducted a study into how six democracies regulated freedom of expression and compared them with the Swedish system. He reviewed processes and limits in a few important areas: censorship/preliminary examination, racist statements, pornography, slander, protection of private life and personal privacy, advertising, freedom to communicate information, blasphemy and the sphere of responsibility. The result was a positive surprise for me.

In broad terms, freedom of expression is quite similar in Denmark, Finland, the United States, Norway, the United Kingdom and Germany. In fact, differences in the boundaries between lawful and unlawful expression were not especially great at all. Then there were many procedural, even constitutional, differences in law and court methods of working. But on many points, the final results were roughly the same with some exceptions, for example the forms of slander and hate crimes, and as regards political advertisements on television. The Nordic countries also have more far-reaching protection of the freedom to communicate information than the others. The decisions of the European Court of Human Rights affect all European countries.

Materially, perhaps the greatest difference, and where Sweden stood out, was that protection levels for private life are lower; the same applies to businesses. We have greater access to official documents than the others concerning information and images of individuals. Neither can businesses bring legal action in Sweden in order to defend their good reputation. Sweden also stands out through our detailed, special constitutional laws. “All the countries have more or less succeeded in gathering constitutional regulation into one paragraph where the essential principles are indicated,” writes Bull. “Older or newer. But the detailed regulation in our special constitutional laws also brings a great degree of predictability, positive or negative.”\textsuperscript{29}

Of all the countries, the Nordic countries were closest to each other, naturally also in their entire societal and media structure. I read with mounting excitement how \textit{Denmark} had its constitutional law that was
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quite old and extremely difficult to change; as Bull writes, the “level of constitutional protection has been weak in Denmark”. To a great degree, protection of freedom of expression is found in general law and it is not noticeably worse than in any of the other countries.

I read about Norway, even more surprised at how they work on the other side of the border, where the Klarälven River becomes the Trysilelva River. There, they have a thoroughly modernised article 100 in the Constitution of 1814, with completely technology-neutral regulation of the conditions of freedom of expression in Norway. Bull states that it stands out as being very friendly towards freedom of expression. Alongside this, it must be stated that many of the arguments in the legislative history for the new constitutional provision are marked by an unwillingness to hold the legislators hostage to the future, he argues.30

But the absolutely greatest surprise for me was Finland’s similarly modernised legislation concerning freedom of expression. This takes place in Finland’s Constitution from 2000. In Section 12, essential protection for freedom of expression and public access to official documents is created. Private life, including confidentiality of informants, is protected in Section 10. A modern regulation of rights also took place in the 1990s. Finland also has an explicit regulation of legal review: the courts are tasked with monitoring that the legislation is consistent with constitutional law. Constitutional law includes legislation such as the 2003 act on the exercise of freedom of expression in mass media. It is an overall regulation of mass media, regardless of the technology used. Internet messaging and Internet publications are placed parallel with printed documents and radio programmes. It is enough for a message to be made available to a broader audience for it to be considered disseminated. This also applies to dissemination of offensive information about an individual’s private life. Here, however, in several cases the European Court of Human Rights (before 2006, when Bull was writing) found that the balance in the Finnish courts between the interests of the individual in protecting their private life and honour is too narrow from the perspective of freedom of Constitutional law includes legislation such as the 2003 act on the exterior of freedom of expression in mass media. The protection of sources and of anonymity of informants is also regulated in the act on the exercise of freedom of expression in mass media. What is especially important is that prosecution law in Finland is just as centralised as it is in the Office of the Chancellor of Justice in Sweden. Bull’s review of the interesting branches of law does not indicate any deficiencies in relation to the Swedish Freedom of the Press Act and the Fundamental Law on Freedom of Expression.
He concludes by saying that what perhaps proves to be of greatest interest is that in Finland, technology-neutral regulation of freedom of expression was introduced into general law, supported by a general provision on protection of freedom of expression in the Constitution, at the same time as it was aimed towards forms of communication that exert particular impact. “In this way, they have been partially successful in ‘having their cake and eating it too’”.

I was of the opinion that the solutions of all three of the other Nordic countries felt equally as possible as the Swedish solution. I understood, with Bull’s analysis of the Finnish situation, that perhaps we could get there without trying to merge or reduce the incredibly detailed Swedish special constitutional laws. Could Finland be used to exemplify a smoother, more effective system than our special constitutional laws – even, in fact, as an example worthy of emulation, where online utterances are placed on a par with those in newspapers and television? It would be fantastic if, over the long term, we could obtain fundamentally similar legislation and practice in this area. Not the same Freedom of the Press Act as that of 250 years ago, but one in which Finland’s solution could be an example for the Sweden of tomorrow.

I decided to ask for an interview with Mr. Bull. He was, by the way, one of the experts in the Media Constitution Committee of which I was also a member when I was new to the Freedom of the Press Act business.

On 17 August, we met in the comfortable Swedish Parliament Café. In my diary I wrote:

After barely an hour with Thomas Bull – the core of the interview was my question of whether, according to his analysis of solutions such as the Finnish one since 2000/2003 with clear formulations concerning freedom of expression in the Constitution and the act on the exercise of freedom of expression in mass media, we could examine and introduce a similar construction in Sweden? He answered ‘yes’. Naturally, after studies into a number of critical points in the earlier unsuccessful attempts at reform. Especially protection of the freedom to communicate information and guarantees against the hasty introduction of new crimes against freedom of expression. What speaks in favour of this is the discrepancy that exists between what people believe, and how few actually know the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, as well as the need for more clearly-defined responsibility concerning what currently lies outside the area of constitutional protection, on the Internet. He was sympathetic towards the matter. I also took up the question of regulation of what came up during the Latvian EU Presidency (in the spring of 2015) – propaganda broadcasts from Russia – could legal measures be taken against those? Naturally he was not certain about the actual legal situation etc. A very good interview. I said that we (i.e. the Social Democrats) will naturally try to work out what is written in the terms of reference, but I am thinking about particular statements plus my essay in the 1766 book on the subject.31
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The future for us

_In the Media Constitution Committee and outside it_

The work in the Media Constitution Committee continued through 2015 and 2016. Johan Hirschfeldt, Stina Malmberg, and others are working on modernising the language and formulation of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. This could signify increased intelligibility. Perhaps it could lead to more than only thirty people reading and understanding these constitutional laws. I have the upper levels of compulsory school, high schools, universities and colleges in mind. Imagine if freedom of expression and its balancing against other interests could be made intelligible and understandable – your freedom, my freedom and integrity – especially on the Internet.

We have also taken up various subordinate points in the terms of reference. I have made an effort, where appropriate, to propose that we do not write more details into the constitutional laws, but place them in the underlying laws. I have asked questions and asked for references for how our Nordic neighbours solve similar problems. Our purpose is to begin to provide ourselves with an approach that – in a long-term perspective – can create a situation that will perhaps be reminiscent of those in Finland and Norway.

The Social Democratic group in the Committee on the Constitution and the Committee on Justice had hoped to be able to see a proposal for legislation against violations of privacy. And, if required, as a possible violation of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, perhaps in accordance with the 2012 Göran Lambertz proposal. Anyway, a classification of crime of this nature is required in the Penal Code. It must be possible to meet online ‘threats and hate’, posted for what may be regarded as the general public, with prosecution. Development of the law is especially necessary to the advantage of those the courts find to be the victims. In 2016, the debate has chiefly been directed towards the ethics of Facebook itself.32

It turned out that a commission of inquiry working parallel with ours took a look at these problems. The commission was led by Gudrun Antemar, with broad support among the parties and other entities in the media system. The public authorities in our country have often hesitated before taking legal measures against such actions.

I must say that this feels much more relevant than the Media Constitution Committee that I am a member of.
The good and the evil

Because, as we know, the Internet has a dominant role in our lives today. In Sweden, people between the ages of 9 and 79 are on an average day online for 122 minutes (that is, two hours), watch television for 90 minutes (one-and-a-half hours) and listen to the radio for 75 minutes (just over an hour). Most of how we in Sweden make use of media – and freedom of expression – lie in these three media. Newspapers take 20 minutes, books almost the same, music a little more and film barely ten minutes.

A lot can be said about what the Internet represents. Mostly good and fantastic. Freedom of expression is an issue for everyone, now that we are all authors and have small printing presses in our hands – our mobile phones.

But at the same time, opportunities for violation of integrity and for threats over the Internet have increased. Journalists and media companies have themselves been subjected to such violation. Research shows that, to a great extent, this involves men insulting women. Often, this involves images of a sexual character. But it also involves men who threaten other men concerning criminal acts.

I will not go into the details of the changes that Antemar et al. propose. Court praxis to date is taken as their point of departure, but they also propose more stringent legislation so that it clearly applies to online threats and hate. I hope their proposals are implemented. But I would like to bring up important essential preconditions.

In several of the new or reformulated classifications of crimes that will apply outside printed documents, radio and television – the media protected by the Freedom of the Press Act and the Fundamental Law on Freedom of Expression – the courts will still have to strike a balance between crime and freedom of expression. This is the case when it applies to the new crime of unlawful coercion of integrity, just as to the revised earlier crimes of slander and gross slander.

But the instruments that have stayed with us since the Freedom of the Press Act was created and recreated between 1765 and 1820 – and in its current versions of 1949 and 1992 – would thus not be employed to strike balances of this kind (i.e. the Chancellor of Justice as sole prosecutor, responsibility as sole publisher and the use of the jury system).

It has also been proposed that legislation related to freedom of expression in the Penal Code must be technology-independent – that is, it must apply to Internet as well as to hard copy or verbal exchanges.

Proposals have also been put forward about adjusting the Freedom of the Press Act after all concerning slander, insults and unlawful threats. This will also apply to the Fundamental Law on Freedom of Expression.
Interestingly, Antemar et al. did this in order for the modernisation and tightening up proposed for the Penal Code to also have an effect within the area protected by constitutional law.

A similar balance is to be struck for those responsible for electronic bulletin boards (websites). Criminal liability will be tightened up somewhat, but will still not lead to self-censorship that is too strong. On most points, freedom of expression will now be defined by occurrences on the Internet, and alongside the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, Antemar et al. also propose that opportunities for criminal injury compensation be introduced in connection with gross slander.

Antemar et al’s proposal could mean that we would obtain a general preventive effect with fewer crimes after several comprehensive prosecutorial assessments and court decisions on statements, above all from online sources. It is important that more people feel better protected from statements and information about them on the Internet than is the case today. I hope legal praxis will be formed based on both Chapter 2, Article 1–2 and 22 of the Instrument of Government (on freedom of expression and freedom of information), on new Swedish legislation, and on praxis demonstrated in the verdicts of the European Court of Human Rights, which are moving more towards protection of private life than publicity.34

The ideal or the technology?

You would have to be blind not to see that through this we could also obtain a significant shift in the entire legal system that regulates freedom of expression in Sweden, although the new crime classifications in many respects are related to personal integrity in connection with sexuality, criminality, and other related aspects. The law will be extensively applied outside the direct printed word and radio or television; outside constitutional regulation, in nearly all its detail, through the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

I imagine that for quite some time ahead, we could have a situation where different forms of legal process are dependent on the technological presentation of a statement. Moreover, there will be changes in societal norms and ethics.

Media consumption is increasing; seen from a global perspective the situation is dizzying. But looking at how we consume media in places like Sweden, developments have proceeded from the printed word. Technological integration in the media is increasing. Researchers and debaters have begun to question the fact that the Freedom of the Press Act and the Fun-
damental Law on Freedom of Expression are technology-based. We can see that other, ‘serious’ democracies regulate their freedom of expression in a way that is independent of technology – Finland, Norway and Denmark for example.

Swedish academic researchers are advocating this for the future. Wiweka Warnling-Nerep winds up an analysis of public access to official document and freedom of expression as follows: “A media independent fundamental law on freedom of expression would undeniably have its advantages, especially as the Fundamental Law on Freedom of Expression has become more and more difficult to handle, but a reform of this kind seems very far off in the current situation.”

Another researcher, Daniel Westman, is clearly on the same track. He argues that a natural response to the convergent media landscape is legal regulation that does not refer to the use of certain technological media in the same way as current legislation does. Within a new framework of this kind, particular privileges in freedom of expression can be awarded to certain entities. Through its Committee of Ministers, the Council of Europe made a recommendation to its member states along these lines in 2011. Some of the contributors to this book deal with this subject; others have rejected it.

For my own part I think that, as a signpost for the future, we could use Finland’s current regulation – that is, fundamental regulations in the Constitution that also entail common European legal principles being applied through the courts of the Council of Europe and the EU, respectively. And under this level, laws that are easier to amend and renew gradually in accordance with technological developments and societal norms. However, this in itself is no Solomonic solution, as Päivi Korpisaari writes in this book regarding freedom of expression and the media landscape in today’s Finland. It is not from “the State and the civil service machinery” that any great threat against freedom of expression or private life comes. Technological neutrality, the principle of responsible publisher and protection of sources also function well in Finland. It is the aggressive, hateful Internet debate where citizens, experts and journalists are attacked with abuse and hate. In this way, Korpisaari argues, comprehensive freedom of expression partially counteracts itself. The author is also pessimistic as concerns the opportunities of really tracking and instituting legal proceedings against the actual online criminals.35

On Sweden’s part, I would argue that we could continue to use Finland as a model for legislation and in the litigation system. I hope that the modernisation of the language, and editing, of the Freedom of the Press Act and Fundamental Law on Freedom of Expression will lead to their being
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read, understood and discussed in their central aspects as effective constitutional law. As is Finland’s Constitution. In fact, as is the first chapter of our Instrument of Government.

One immediate development could start with the proposals from Antemar et al. being put into practice. The Swedish people, their Government and Parliament would really need more verdicts concerning online crime in order to be able to assess how the balance between freedom of expression and constraints must be adapted to the technological and ideological development of a free people. Rydin’s book from 1859 shows, in chapter after chapter, how freedom versus limitations were viewed in the “Svenska Press-Lagstiftningen” (Swedish Press Legislation) of the era.

Finland’s Constitution and ours

The searchlight can then turn to the area protected by the Constitution. What will legal praxis and public opinion be concerning what is happening on the Internet? I believe it would be better than it is currently if we could witness more prosecutions, jury decisions and verdicts after indictment by the Chancellor of Justice. It would thus be easier for the Office of the Chancellor of Justice to justify why various reports are not being brought to court. In fact, even ‘individual’ prosecutions instead of mediation would be desirable. The media themselves could also require more cases in order to be sure of their decisions to publish.

Another development could be, considering the prevalence of the digital in our media habits, to gradually bring provisions from the Freedom of the Press Act and the Fundamental Law on Freedom of Expression down to general law. Perhaps with the same character as the Riksdag Act, which is determined and amended in various ways. One is via a simple majority on two occasions with a general election in between – that is, the same as for changes to constitutional laws. Another, used most often, is by only one decision with at least three quarters of those voting and more than half of the MPs voting for the decision. Supplementary provisions in the Riksdag Act are passed using the same system as laws in general i.e. with a simple majority in the Chamber. The statement by the Council on Legislation could be issued without the possibility of exemption items concerning the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.36

There would still be space for a gradually abridged, essentially integrated Freedom of the Press Act and Fundamental Law on Freedom of Expression, in order to guarantee their core and history, alongside the Instrument
of Government. I include a ban on censorship for public authorities here, likewise public access to official documents. There must be freedom for, and protection of, informants. And crimes against freedom of expression must be stated in the fundamental law.

We should be able to count on these cornerstones for another 250 years and more, but right now Finland is leading in legislative reform.

The Sweden of the 1700s, and with it today’s Finland – have certainly left our mark on opinion, philosophy and parliamentary efforts to achieve freedom of expression for free peoples. Long may we continue to do so.
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Notes

1 Rydin 1859, p. 73.
3 Nordin, this book.
5 Nygren, this book.
6 Virrankoski 1995, pp. 179–196; Hirschfeldt 2009, pp. 380–383; Axberger, this book; Korpiisaari, this book; Skuncke, this book. Regarding the Government’s decision, Jonas Nordin and Karin Borgkvist are of the opinion that the original document has disappeared. There are transcripts. Message me.
7 Hirschfeldt 2009, p. 393; Skuncke, this book.
9 Hirschfeldt 2009, pp. 385–388, 392–394; Axberger, this book; Rosengren, this book. Professor Inge Jonsson helped me understand Leopold’s role, starting in the last two volumes of Olle Holmberg’s biography of Leopold (Holmberg, 1962 and 1965).
10 Hirschfeldt 2009, pp. 394–408; Axberger, this book.
13 Axberger, this book.
16 The following text is taken from von Sydow (2009), but has been edited here for reasons including reference to the articles of this book.
21 Johansson 2014, pp. 185–201; Axberger, this book; Pleijel, this book. The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in 1950 by the signatory parties, including Sweden. Several supplementary protocols have been added. As of 1995, it is also in force as a general law in Sweden. Nor may any other law or regulation, in accordance with Chapter 2, Article 19 of the Instrument of Government, be issued contrary to the Convention. Govt. bill 1993/94:117 and SOU 1993:40 Part B. Finland’s Constitution contains a regulation on “The fundamental rights and freedoms during states of emergency” in Article 23.
22 Funcke, this book; Jäderblom, this book. I myself participated in the decision and preparations in the Committee on the Constitution for this amendment to the law.
24 Wennberg, Eliason & Regner 2003, pp. 96–98. The state of the debate in 2006 regarding media ethics is reflected in a debate anthology concerning the self-regulation of the Press Council and Review Board for Radio and Television; see Petersson 2006. Petersson himself writes (p. 21) that hardly anyone defends the status quo, but that there is a widespread perception that the current self-regulating system needs to be reformed.
28 Björn von Sydow, Riksdagen Diary 31 Aug 2015.
32 Topical contributions to the debate in various lines: Interview with Johan Hirschfeldt for an integrity protection rule in the form of constitutional law in Wendel Avisan No. 56 (Dec 2015). Jeanette Gustafsdotter and Per Hultengård, both in the Swedish Media Publishers’ Association, want to preserve the prevailing system of freedom of the press and of expression, whereas many MPs have different opinions; Svenska Dagbladet, 30 Dec 2015. And Björn Wiman, who argues that Facebook threats and hate will affect freedom of the press if the major Internet companies cannot keep things clean; Dagens Nyheter, 10 Jan 2016. Journalists do not dare bear witness to the growing online hate, writes Rebecca Bohlin in Dagens Nyheter, 15 Jan 2016. Threats and hate in channels such as Facebook are criticised in Dagens Nyheter, 24 Feb 2016; Svenska Dagbladet, 29 Feb 2016; and Svenska Dagbladet, 1 March 2016. Facebook removed two cases of online hate; Svenska Dagbladet, 4 March 2016. Facebook hate rarely taken up in court; Svenska Dagbladet, 5 March 2016. Many authors and artists subjected to threats and hate; Dagens Nyheter, 14 April 2016. Will Facebook swallow the Internet - and journalism? Svenska Dagbladet, 18 May 2016. Web giants to stop Net hate in EU; Europaportalen.se, 2 Jun 2016.
33 Report: Hot mot mediehus och medarbetare (Threats against media companies and employees, 2015:1); Utgivarna, pp. 4–26, 41. The report can be read on Utgivarna’s website: www.utgivarna.se.
36 RF (Instrument of Government) Chapter 8, Articles 14, 15, 17, 20–22.
The challenges of freedom of expression

Tarja Halonen

Introduction, or the northern pioneers

History can be read in many ways. This year, in both Sweden and Finland, we are celebrating the 1766 Freedom of the Press Act. And we have every reason to do so. Sweden, to which Finland then belonged, was among the first countries in the world to legislate on freedom of the press as well as on public access to court judgments, decisions by public authorities and other official documents.

This Age of Liberty did not last long, though – only a few years. But people were still given a taste of how things could be. And there is evidence of the stimulating effect this liberty had, even during the short period it lasted. Book printing took off, newspapers were born and overall there was a considerable increase in citizens’ activity and interest in social issues.

However, it is a totally different question whether, in the view of the sovereign or of others, this was a good or a worrying thing. If we stick to our current view of democracy, freedom of expression – to which freedom of the press is connected – is an extremely important factor.

Comprehensive respect for human rights is one of the cornerstones of democracy. A functioning legal system and good administration also have a bearing on this. It is very interesting that public access to decisions by courts and public authorities, as well as to other official documents, was a substantial feature of the struggle for press freedom during the Enlightenment in Sweden.

This volume also describes Finland’s history as marked by various forms of censorship. Freedom has not been easily won during Finland’s history. Could it be for this same reason that Finnish researchers deal with the shared Swedish period somewhat more critically? Nygren and Ekholm, for example, remember to mention how Gustav Vasa closed down Söderköping’s book printers in 1526, and how Jacobus Finno deleted the most evident Catholic characteristics in the Piae Cantiones song collection. The
same Finno published the first Finnish-language book of psalms in 1583 and forbade the use of the Kalevala metre in Finnish poetry.

I also find it interesting that Anders Chydenius, a representative of the Clergy, came from what Stockholm viewed as the back of beyond, i.e. Ostrobothnia in Finland. The same was true of a surprising number of other representatives of the estates who were active in the press freedom issue, including Peter Forsskål, who most clearly contributed a continental European touch to the northern debate.

Same point of departure – different historical developments

I will refrain from describing in any closer detail the shared history of our two countries prior to 1809, since there are other excellent contributions to this volume that deal with this subject. A few comments are nonetheless called for in consideration of subsequent developments. From Finland’s point of view it was, of course, fortunate that we spent the longest period before our independence together with Sweden, which can be said by international standards to have been a fairly democratic country. Less fortunately, the press freedom restrictions imposed by Gustav III and his successors came into force before our countries had gone their separate ways. When Sweden’s King Gustav IV Adolf lost the war against the Russian Tsar Alexander I, these regulations remained in force on the Finnish side even after 1809.

The period of autonomy

In the Peace Treaty of 1809, Sweden was forced to relinquish the eastern half of its Kingdom to Russia. This eastern half, i.e. Finland, was allowed to keep its religion and its laws as an autonomous Grand Duchy. In Sweden, this military defeat led to major social change that implied the strengthening of democracy. This was not the case on the Finnish side. On the contrary, censorship was eventually tightened. Still, this did not entirely prevent the strengthening of self-rule and the development of the Finnish language. It was only with the period of oppression which began in 1899 that press freedom became so fettered that it led to severe difficulties. Developments then continued along this path until Finland became independent.

The Finnish people’s experiences of censorship give a very clear picture of how it was not only provisions in laws and other rules and regulations on censorship that determined events, but how administrative officials’
own opinions exerted very considerable influence in practice. They in turn reflected the zeitgeist that dominated in Russia at different times.

Restrictions to freedom of expression during the period of independence

In his article, Professor Ekholm divides the period of censorship in Finland into four parts: the period of limited freedom of expression (1917–1939); war and censorship (1939–1947); the battle of values and foreign policy censorship (1947–1994); and finally, the period of the EU and the Internet, beginning in 1995.

Even as the Russian era was coming to a close, the atmosphere was affected by the first world war. Finland’s independence was initially marked by armed conflicts, for instance in the civil war in 1918, the shadow of which would fall long and dark. When the Winter War broke out in 1939, and WWII that followed extended all the way to Finland, the justification for restrictions on freedom of expression was changed to the common struggle against an external enemy. As a defeated party, Finland was subsequently subjected to both direct and indirect surveillance systems. After a few optimistic years of peace, the Cold War brought new tensions all across Europe, which also extended to various areas of freedom of expression.

It can be clearly observed throughout Finnish history how war and other states of emergency exert a negative effect on human rights – including freedom of expression. They are subordinated to another important concern: security. The same pattern appears to be repeated in other countries. This is also a factor in the fight against terrorism.

Neither is it so that freedom of expression is automatically reinstated to its previous extent when the security threat disappears. This is particularly noticeable after civil wars - an issue to which particular attention should be paid during peace negotiations.

Even during Finland’s period of independence, the various phases of freedom of expression are only partly discernible in the actual legislation that regulated it. As previously noted regarding the period of autonomy, the general societal spirit was reflected in press freedom and how this was interpreted during the period of independence. For example, political movements on the left were still subject to special controls and restrictions in the 1920s and 30s.

Here in Finland as well as in other places, freedom of expression has been very adroitly monitored even without pre-censorship when it has been regarded as necessary, for example for reasons of national security.
After the wars, people in Finland were warned against criticising the Soviet Union. It was probably a very sensible foreign policy, but not particularly flattering with respect to freedom of expression. There are good descriptions of these eras in, for example, the Korpisaari and Scheinin articles.

In order to obtain a more authentic, or at least more exact, picture of each period we should analyse not merely the censorship of de facto political activities and suchlike, but also sex crime legislation and regulations concerning blasphemy and the inviolable position of heads of state.

Let me take just one example. Finnish legislation on sex crimes was previously much harsher than that in Sweden. It was eventually liberalised in the 1980s, but the instigation article that forbade "public instigation of fornication between persons of the same sex", i.e. homosexuality, was only repealed in 1999. Thus homosexuality between adults was permitted by law, but instigating it (or incitement to it) was criminal. This is an odd criminal law structure in itself, but the interpretation of it led to even odder situations since it limited the provision of factual information.

Is media self-regulation sufficient?

The media has striven to regulate its own behaviour in accordance with what is known as good journalistic practice. This has been justified since the press and other media have been instructed to assume responsibility for their activities. And it has also protected people who feature in the news from unfounded or offensive reporting.

Another form of self-regulation has been a striving for conformity – perhaps in order to guarantee appreciation from colleagues. The continuing concentration of power in Finland’s printed media to a few large groups of companies has reinforced this conformity in news reporting and in social debate. As power is also concentrated to international news agencies, there is a risk that news and background material are made narrower in scope even without censorship.

President Koivisto called this lowering of the opinion bar brought about by the media a "lemming phenomenon". That statement did not exactly improve relations between the media and the country’s political leadership. On the other hand, media support has been important for certain major policy decisions, especially in connection with referenda or elections. The support of the dominant media was probably important in connection with Finland joining the European Union. On the issue of joining NATO, however, the media has not managed to bring about any larger positive shift in opinion, even if the support for this is still evident in the dominant media.
A free media is the fourth estate. It would be good, however, to bear in mind that freedom of expression affects every single person, not only the media. Not everyone has been able to access press freedom or other mass communications, for financial or other practical reasons, but the principle is in the process of taking on new meanings as a result of information technology developments.

Media power wielders have been involved in politics in Finland too, starting with the owners of the Sanoma company, the famous Erkko family. Still, after the founder, they have not personally participated in any actual political activity. But there are no technical barriers to someone creating their own power machine along the lines of Berlusconi.

At the time of writing Finland has once again been declared the leading country in the world, in an international assessment (Reporters Without Borders), in terms of freedom of expression and the press. But developments in Finland have not been only positive. Journalists who have written about racism or refugees have received serious threats, but compared to other countries, the situation is nevertheless better.

The Principle of Public Access to Official Documents, along with other concepts of the rule of law, was strengthened during the period of independence. The provisions on public access were brought together as early as in 1951. I refer in this connection to the work of Professor Veli Merikoski.
A new, unified Europe

The disintegration of the Soviet Union laid the foundations of renewed independence for several eastern European countries. The power structure in Europe changed. New members joined first the OSCE, then the Council of Europe, the European Union, NATO and other international organisations. The history of Europe was also subjected to new interpretations. On the basis of my own experience I would venture that the 1990s in our part of the world was in many respects an optimistic period, during which we built the new Europe. The general optimism regarding intensified international cooperation has now begun to fade in Europe as well, even though this is a time when it is needed more than ever.

The requirements for joining international organisations include respect for human rights, democracy and the rule of law. Monitoring of these criteria has not always been very stringent, or even fair, but it has nonetheless opened up various European countries’ democratic structures – and their weaknesses – to international comparison.

Freedom of expression has regularly been among the rights monitored. The financing of the press is frequently the subject of political debate, both domestically and internationally. As a rule it is important to earn advertising revenue, but for many different reasons this is often unevenly distributed.

It is quite common for various opinion-forming newspapers to receive subsidies. In Finland there has also been an information subsidy, divided between the parliamentary parties in accordance with their proportion of seats, for publication of what are known as party newspapers. This system has been comprehensively revised recently. One way of giving people in sparsely populated areas greater reading opportunities is through transport subsidies for daily newspapers – but the greatest benefit from this has always been reaped by the newspapers that have the highest circulation.

With the sharpening of the political atmosphere, several countries have once again begun to take a very dim view of financing that originates beyond the country’s borders – irrespective of whether it is related to political activity in general, or the media, or perhaps environmental protection. This can easily lead to restrictions on freedom of expression. This phenomenon has not been observed in Finland.

Overall, European integration has strengthened freedom of expression, while a similarly positive development cannot be seen in terms of institutional openness. The European Union has supported democratic structures in member states and candidate countries, but the EU’s own decision-making system, with its long drafting procedures and unofficial meetings, is not altogether simple in terms of openness. Despite this, my
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view is that European integration is a process that predominantly increases openness.

For all its difficulties and weaknesses, the European integration process is still a unique attempt to bring together very different countries in a binding form of cooperation that covers the entire continent of Europe. The European Union is not a federal state but a federation of states strengthened by shared values.

The European Union enables free movement within the Union regardless of whether the purpose is tourism, work or studies. This is something that also contributes to openness of information. Security along the external borders is taken care of without striving, by extension, for some kind of EU fortress.

I remember well how we told newer members of the Union that the EU provides security for its citizens, but also strives to integrate it into its immediate environment. History teaches us that a fortress provides only temporary sanctuary. Sooner or later someone will arrive from outside and conquer it, which is why integration is the best guarantee for security.

The current discussion about internal, as well as external, threats against Europe and the security of Europeans is very different.

Borderless freedom on the Internet

Developments in media tools and technology have traditionally prompted discussions about freedom of expression and the responsibility it implies. This has also been the case with the Internet.

The growth of the Internet and of social media in the 21st century has radically altered views on freedom of expression. And the worldwide web has also challenged traditional media. Professional journalists have become forced to compete with fast-moving actors who attract large readership through the exuberance of their content, but without taking any responsibility for it.

In Finland too, this longed-for outspokenness has turned into nastiness and online hatred. When the world changes at an ever-faster pace, uncertainty in everyday life increases. This has been stoked by economic crises, including the euro crisis, and subsequent mass unemployment. Our view of the world has been influenced by the fact that previously distant, local conflicts have grown into ruthless armed confrontations with reverberations around the world.

The appalling war in Syria has led to a wave of refugees heading towards Europe, which in turn causes fear and helplessness among people. Terrorist attacks in major European cities have reinforced these emotions.
All of this is likely to change the atmosphere into one that favours security, which may mean restrictions on freedom of expression, or at least increased responsibility for private individuals and organisations for what they say and do.

Our current model of democracy is based on respect for human rights. It is the state’s task to guarantee that these goals are achieved. Democratic decision-making, good administration and the rule of law all serve the same goal. Only if people have the right to peruse public authorities’ decisions and, when necessary, ensure that a decision is correct by means of an appeal, can they know that their rights have not been violated.

As a matter of fact, Anders Chydenius and his peers summarised the matter surprisingly analytically as early as 250 years ago. Respect for human rights, good administration and the rule of law are closely associated.

Finland’s current legislation, beginning with the Constitution, emphasises the importance of citizen participation in, and influence over, the development of society and of their living environment. The same applies to the laws on public access, public administration and municipalities, which regulate matters at municipal level. Provisions in the same spirit can be found in the laws that regulate various sectors of public administration.

How can this development be protected though the ongoing privatisation trend? In companies and institutions where the government or a municipality is in charge, it can be preserved – if this is what they want – by specific regulations or political control, but at completely privatised entities the requirement for public access may collide with the protection of property rights. The only resort then is consumer protection legislation, which is considerably weaker.

The history of freedom of expression tells us very clearly how, as technology developed, legislators had to consider whether freedom of expression could be extended to these fields as well. The development of printing meant that contemporaneous freedom of expression was greatly strengthened. For this reason, restrictions on freedom of expression, or responsibility for the production, distribution or other use of print products, were important issues for the sovereign. It was also a matter of a business activity growing very rapidly, which in itself fascinated many.

The question has been the same with the use of radio, TV, films and now, most recently, the Internet: does freedom of expression only apply when certain means are used, or is it a fundamental human right that should not be limited on account of the tools being used?

Finnish legislation on freedom of expression is largely up-to-date. Only the Internet brings challenges. The media traditionally offers protection to its sources: the newspaper or equivalent takes responsibility for publica-
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tion of information from an anonymous informant. On the Internet, this responsibility is much more obscure and harder to pinpoint. This is precisely the reason it has become a popular place for spreading hate speech.

Restrictions of the right to use the Internet, or investigation into writers’ identities, are measures that have become the subject of growing interest in authoritarian societies. And even in other countries, the security services appear increasingly interested specifically in the Internet and its users. There is already evidence that modern warfare has spread to the area of information security. It seems likely that this will eventually affect private individuals’ opportunities of using the Internet as well.

In my view, a broad interpretation of freedom of expression lies in its very nature, but I do not want to rule out reflections on responsibility. In western jurisprudence, we have hitherto referred to rights for individuals and obligations for states. Since the state has been given the right to apply coercive measures, and the means to monitor the individual, the state or the country’s government must also take responsibility for the system. Whether the Internet constitutes an exception in this respect remains to be determined in the future.

Values in a shared world

The world does not end where Europe ends. The major threats against our security are global – as are the effective solutions to them. Achieving these requires more intensive cooperation than in the past. Fortunately, this is something all nations have agreed on in adopting the UN’s global sustainable development goals as well as the Paris Agreement on climate change. But how are we going to succeed in implementing Agenda 2030?

It is still necessary for member states’ governments to act decisively, but this is not enough. In order for implementation to succeed, voluntary agencies, researchers and the business community must be on board too. This is an even more difficult – but not impossible – task in this conflict-riven world.

One major challenge in today’s globalised world is to organise cooperation between countries with different religions and ideologies, and which are very different in other ways too. Ismail Serageldin, founding Director of the new Library of Alexandria in Egypt, observed at an international conference of librarians that censorship and self-censorship are generally about ‘King, God and Sex’. They continue to be truly very descriptive criteria when it comes to the scope of freedom of expression!

Expanded in this way, censorship in some form has always existed and will always exist in our societies. The question should perhaps be phrased
differently i.e. what kind of censorship or self-censorship would harm freedom of expression least, while protecting people’s privacy and other human rights in the best possible manner?

Finland’s history also shows clearly that actual freedom of expression was not necessarily manifested in its entirety in press freedom legislation. Political control exerts a strong influence on the decisions of what are known as politically-unaffiliated administrative authorities, and even of courts. I do not think this is always a matter of conscious political control, but that it may be down to a sort of generally-prevailing societal spirit. For example, the official foreign policies of Finland and Sweden have tended, to a considerable degree, towards the same direction over the last few decades.

There are differences as well. The Swedish position may be described as a strong defence of democracy and human rights and also, when required, fairly strong criticism of various international actors. Finland has once again been less strident in its criticism, and considerably quieter vis-à-vis the US and other major powers. My own criticism of US military action in Iraq as being in breach of international law led to a flood of criticism in the Finnish media, even though the UN later adopted the same position.

It is structurally inevitable that two people’s – or the individual’s and society’s – interests will end up on a collision course in some area or other. It would therefore be best to consider what kind of system could best protect the individual’s right to exercise his or her freedom of expression without jeopardising another individual’s protected rights, or even the stability of democratic society. When I formulate myself this way, I know that it automatically throws up a series of questions.

Even after the UN Convention on Human Rights, it has been necessary to draw up new provisions on the rights of groups such as women, children, disabled people, minorities and indigenous peoples. This of course does not mean that the members of these specifically-mentioned groups are not humans, but rather that their human rights are violated to such an extent that it is justifiable to provide specifically for their protection in order that we might guarantee them an equal position. This vulnerable position occasions the need for greater protection. By definition, the majority decides in a democracy, meaning there is a risk to the minority that the majority will not consider its rights on an equal level with its own interests.

An interesting question, albeit one that receives less attention in my own study, is how the economic interests of freedom of trade and business activities are taken into account when human rights are provided for. The current discussion does not pay this issue very much attention. Chydenius and his contemporaries attached as much importance to freedom of trade, i.e. trading rights for Karleby and Ostrobothnia in general, as to freedom
of expression. Economic circumstances have had, and continue to have, considerable significance in connection with freedom of expression – particularly with the emergence of new forms of expression.

Independent Finland’s fundamental laws have guaranteed the right to property and freedom of trade. The Parliamentary Constitutional Law Committee has traditionally been very scrupulous about their protection. Freedom of competition also has a prominent place in the regulatory framework of the European Union. Judgments by the European Court of Justice indicate that freedom of competition is in a strong position when different interests collide.

How national legislation and administrative practice go together with the EU’s regulatory framework and administrative tradition is something which is only now emerging. This situation is dealt with in greater detail in other articles in this volume. The matter is also important with respect to the EU’s legitimacy, in a situation where the number of Europeans who are dissatisfied with the Union is growing, while we – in the grip of globalisation – nevertheless need more supranational, but democratic, strength.

The future challenge for freedom of expression will be that it grows from the local to the national, and finally to the global dimension, while our values do not become uniform at the same pace. On the contrary, we can simultaneously discern both the striving to guarantee the universality of human rights, and a counter-movement that attempts to forbid these values.

This is not the first time that humanity is attempting to achieve peace by unifying values. There were similar hopes when the Roman Empire expanded (Pax Romana) and when the British Empire was extended to distant lands. Various religions and ideologies have promised the same thing. And yet the distinction from these earlier situations is clear: with the help of modern technology, information is spread in a fraction of a second, and can no longer be retracted.

People and nations are also more strongly integrated into the global economy than before – which is not equal, but ties us together. It would be very difficult to disengage from the global system. Awareness of sustainable development and the necessity of achieving it will hopefully spur us on to cooperation.

I personally believe that it is worth trying to identify shared values, and to strive to strengthen the supranational systems by democratic means. But this will require quite a bit of broad-mindedness and flexibility.

Building supranational and perhaps even global systems is a slow and difficult process. It is much easier to obstruct or sow discord in these efforts. While it is possible to eliminate ISIS and comparable organisations, new and similar organisations may emerge in the future. For that reason
we must examine why these extreme phenomena arise, and work towards national and international collaboration in order to prevent these destructive developments even more effectively. Do we need ever-closer surveillance of what people are up to, or is there another, better method?

If we take a moment to return to Ismail Serageldin’s observation about ‘King, God and Sex’, we can note that equality between women and men is far from being a reality, despite the success that the last century has contributed. In this respect as well, Sweden and Finland are among the very successful countries. Respect for different religious values is also at a fairly satisfactory level.

Recently in Germany, Turkey’s President Erdoğan was derided ‘in the name of artistic freedom’. Turkey cited an old article of German legislation that protects the honour of foreign sovereigns, and demanded that the demonstrators be punished. Although the Germans seemed to agree that the article was antiquated, it appears that the matter will go to court. Similar regulations exist in other countries too. Different kinds of societies have to tolerate each other, and be able to work together, in order to achieve our global goals.

And still this is not enough. It is not possible to isolate yourself in today’s world. In order for us to be able, with a sense of security, to enjoy democracy, human rights and good administration, we have to be capable of making the effort to ensure that they touch everybody’s lives – where we are as well as in other places.

‘Freedom of the press is fundamental to a free society.’

From the current Freedom of the Press Act
Joint bibliography and list of references

Compiled by Olof Holm

Non-printed sources

Post- och telestyrelsen (PTS)

Swedish National Archives (RA)
Manuskriptsamlingen, vol. 208: Stora särskilda deputationens protokoll, 1761 (avskrifter) [Manuscript Collection, Vol. 208: Minutes of the Great Special Deputation, 1761 (transcripts)]
R 3404: Stora deputationen 1765–66, protokoll och bilagor [R 3404: The Great Deputation 1765–66, minutes and appendices]
R 3405: Tredje utskottet 1765–66, protokoll och bilagor [R 3405: The Third Committee 1765–66, minutes and appendices]
R 3665: Gustavianska handlingarna, hemliga utskottets handlingar, ”Protokoll och Handlingar vid Riksens Ständers Hemliga Utskott År 1800” [R 3665: Gustavian documents, Documents of the Secret Committee, “Protokoll och Handlingar vid Riksens Ständers Hemliga Utskott År 1800”]

Swedish parliamentary documents later than 1866

Government bills
Prop. 1940:57. Förslag till förordning rörande förbud mot befordran av vissa periodiska skrifter med statliga trafikmedel m.m. [Proposal for an ordinance concerning prohibitions against the transport of certain periodical publications by State means of transport, etc.]
Prop. 1940:269. Förslag till ändrad lydelse av § 86 regeringsformen och § 38 riksdagsordningen samt till införande i tryckfrihetsförordningen av en ny paragraf, betecknad såsom § 6, m.m. [Proposal for amended wording of Article 86 of the Instrument of Government and Article 38 of the Riksdag Act, as well as introduction of a new paragraph into the Freedom of the Press Act, designated Article 6, etc.]
Prop. 1941:253. Förslag till lag med vissa bestämmelser om tryckta skrifter vid krig eller krigsfara [Proposal for a law with certain provisions on printed publications during war or threat of war]

Prop. 1948:230. Förslag till tryckfrihetsförordning m.m. [Proposal for Freedom of the Press Act, etc.]


Prop. 1973:33. Förslag till ändringar i tryckfrihetsförordningen m.m. [Proposal for amendments to the Freedom of the Press Act, etc.]

Prop. 1975/76:160. Om nya grundlagsbestämmelser angående allmänna handlingars offentlighet [On new constitutional provisions regarding public access to official documents]

Prop. 1975/76:204. Om ändringar i grundlagsregleringen av tryckfriheten [On amendments to the constitutional regulation of freedom of the press]


Prop. 1986/87:151. Om ändringar i tryckfrihetsförordningen m.m. [On amendments to the Freedom of the Press Act, etc.]

Prop. 1990/91:64. Yttrandefrihetsgrundlag m.m. [The Fundamental Law on Freedom of Expression, etc.]

Prop. 1993/94:48. Handlingsoffentlighet hos kommunala bolag [Public access to documents in municipal companies]


Prop. 1993/94:117. Inkorporering av Europakonventionen och andra fri- och rättsfrågor [Incorporation of the European Convention and other freedom and rights issues]

Prop. 2004/05:65. Århuskonventionen [The Århus Convention]

Prop. 2012/13:192. Sekretess i det internationella samarbetet [Secrecy in international collaboration]

Prop. 2013/14:47. Några ändringar på tryck- och yttrandefrihetens område [Some amendments in the fields of freedom of expression and of the press]

Motions, First Chamber

1940, lagtima riksdagen, nr 1, av herr Herlitz, om ändrad ordning för genomförande av beslut om grundlagsändring [1940, ordinary session of the Riksdag, No. 1, by Mr. Herlitz, on amended system for implementation of decisions on constitutional amendments]

1940, lagtima riksdagen, nr 213, av herr Herlitz m.fl., i anledning av Kungl. Maj:ts proposition med förslag till ändring i vissa delar av tryckfrihetsförordningen m.m. [1940, ordinary session of the Riksdag No. 213, by Mr. Herlitz et al., in view
of the Government bill proposing the amendment of certain parts of the Freedom of the Press Act, etc.]

**Written communications from the Government**

Skrivelse 2001/02:110. Redogörelse för arbetet inför och under det svenska ordförandesskapet i EU första halvåret 2001 med handlingssoffentlighet i EU:s institutioner [Account of the work prior to and during the Swedish Presidency of the EU, first half of 2001, on public access to documents in EU institutions]

**Swedish Government Official Reports**

Betänkande med förslag till tryckfrihetsförordning [Report with proposal for Freedom of the Press Act] (1912). Submitted... by specific members of the commission within the Ministry of Justice.

SOU 1927:2. Utredning med förslag till ändrade bestämmelser rörande allmänna handlingars offentlighet [Inquiry with proposal for amended provisions concerning public access to official documents]

SOU 1934:54. Betänkande angående tryckfrihetsprocessens ombildning [Report regarding the reconstruction of freedom of the press cases]

SOU 1935:5. Förslag till ändrade bestämmelser rörande allmänna handlingars offentlighet [Proposal for amended provisions concerning public access to official documents]

SOU 1940:5. Promemoria med förslag till vissa åtgärder mot missbruk av tryckfriheten [Memorandum with proposal for certain measures against abuse of freedom of the press]

SOU 1941:20. Ändrad lydelse av § 16 regeringsformen [Amended wording of Article 16 of the Instrument of Government]


SOU 1951:21. Utredning angående myndigheternas förhållande i den s.k. Kejneaffären m.m. [Inquiry concerning the relationships of the government authorities in the “Kejne Affair”, etc.]

SOU 1972:47 Data och integritet [Data and integrity]. The Committee on Public Access to Official Documents and Secrecy Legislation


SOU 1975:49. Massmediegrundlag [Fundamental Law on Mass Media]

SOU 1975:75. Medborgersliga fri- och rättigheter [Civil Rights and Freedoms]

SOU 1978:34. Förstärkt skydd för fri- och rättigheter [Strengthened Protection for Rights and Freedoms]

SOU 1979:49. Grundlagskyddad yttrandefrihet [Constitutionally Protected Freedom of Expression]
Joint bibliography and list of references

SOU 1983:70. Värna yttrandefriheten [Safeguarding Freedom of Expression]

SOU 1990:12. Meddelarrätt [Law on Informants]. Meddelar frihet i företag och föreningar, m.m. [Freedom to communicate information in businesses and associations, etc.] Report by the Committee on Informant Protection

SOU 1992:134. Handlingsoffentlighet hos kommunala bolag [Public access to documents in municipal companies]. The Committee on Local Democracy. Interim report


SOU 1997:49. Grundlagsskydd för nya medier [Constitutional Protection for New Media]


SOU 2013:79. Stärkt meddelarskydd för privatanställda i offentligt finansierad verksamhet [Strengthened informant protection for private employees in publicly financed activities]

SOU 2016:7. Integritet och straffskydd [Integrity and legal protection]. Report by the Commission on Strong and Modern Criminal Law Protection for Personal Integrity

SOU 2016:58. Ändrade mediegrundlagar [Amended Fundamental Laws on Mass Media]. Report by the Media Constitution Committee. 1–2

Committee reports, etc.


KU 1940:28. Konstitutionsutskottets betänkande om förslag till bl.a. insförande i tryckfrihetsförordningen av en ny paragraf [Report of the Committee on the Constitution on proposals for actions such as introduction of a new article in to the Freedom of the Press Act]
Joint bibliography and list of references


KU 1948:30. Konstitutionsutskottets betänkande om förslag till tryckfrihetsförordning m.m. [Report of the Committee on the Constitution on proposals for a Freedom of the Press Act, etc.]


2011/12:KU5y. Statement of the Committee on the Constitution, Subsidiaritetsprövning av förslag till direktiv och förordning vad gäller information till allmänheten om receptbelagda läkemedel och humanläkemedel [Subsidiarity review of proposals for directives and regulations regarding information for the general public on prescription medicines and medicinal products for human use]


Parliamentary records

Riksdagens protokoll vid lagtima riksmötet år 1871, andra kammaren [Parliamentary record during ordinary session of 1871, Second Chamber]

Finnish parliamentary documents

Government bills


RP 54/2002. Regeringens proposition till riksdagen med förslag till lag om yttrandefrihet i masskommunikation samt vissa lagar som har samband med den [Government bill to Parliament with proposal for law on freedom of expression in mass media, and certain laws with connection to it]
RP 167/2003. Regeringens proposition till riksdagen med förslag till lag om ändring av skadeståndslagen och vissa lagar som har samband med den [Government bill to Parliament with proposal for law on amendment to Law on Damages, and certain laws with connection to it]

RP 19/2013. Regeringens proposition till riksdagen med förslag till lagar om ändring av strafflagen, 10 kap. 7 § i tvångsmedelslagen och 5 kap. 9 § i polislagen [Government bill to Parliament with proposal for laws on amendments to the Criminal Code; Chap. 10, Section 7 of the Coercive Measures Act; and Chapter 5, Section 9 of the Police Act]

**Commissions of inquiry**


KB 1996:2. Yttrandefrihetskommissionens delbetänkande [Interim report of the Committee on Freedom of Expression]


**Committee reports, etc.**


GrUU 2/1986. Grundlagsutskottets utlåtande om regeringens proposition med förslag till lagstiftning om kabelsändningsverksamhet och riksdagsledamot Laurilas m.fl. lagmotion nr 76/1985 rd med förslag till lag om kabelsändningsverksamhet
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samt riksdagsledamot Alppi m.fl. lagmotion nr 85/1985 rd med förslag till lag om kabelsändningsverksamhet [Statement by the Constitutional Law Committee on the Government bill for legislation on cable broadcast operations, and MP Laurila’s, et al., motion No. 76/1985 rd with proposal for a law on cable broadcast operations, and MP Alppi’s, et al., motion No. 85/1985 rd with proposal for a law on cable broadcast operations]

GrUU 19/1998. Grundlagsutskottets utlåtande om regeringens proposition med förslag till lagstiftning om televisions- och radioverksamhet [Statement by the Constitutional Law Committee on the Government bill with proposal for legislation on television and radio operations]

GrUU 36/1998. Grundlagsutskottets utlåtande om regeringens proposition med förslag till revisering av straffbestämmelserna om kränkning av integritet och frid samt om årekränkning [Statement by the Constitutional Law Committee on the Government bill with proposal for revision of the penalty provisions for violation of integrity and peace, as well as for defamation]

GrUU 23/2000. Grundlagsutskottets utlåtande om regeringens proposition med förslag till lotterilag samt vissa lagar som har samband med den [Statement by the Constitutional Law Committee on the Government bill with proposal for a lottery law and certain laws with connection to it]

GrUU 60/2001. Grundlagsutskottets utlåtande om regeringens proposition med förslag till lag om tillhandahållande av informationssamhällets tjänster och till lagar som har samband med den [Statement by the Constitutional Law Committee on the Government bill with proposal for a law on provision of information society services and for laws with connection to it]

GrUB 14/2002. Grundlagsutskottets betänkande om regeringens proposition med förslag till lag om yttrandefrihet i masskommunikation samt vissa lagar som har samband med den [Statement by the Constitutional Law Committee on the Government bill with proposal for a law on freedom of expression in mass media, and certain laws with connection to it]

GrUU 19/2002. Grundlagsutskottets utlåtande om regeringens proposition med förslag till lagar om ändring av läkemedelslagen och vissa andra lagar [Statement by the Constitutional Law Committee on the Government bill with proposal for laws on amending the Medicinal Products Act and certain other laws]

GrUU 9/2004. Grundlagsutskottets utlåtande om regeringens proposition med förslag till lag om dataskydd vid elektronisk kommunikation och om ändring av vissa till den anslutna lagar [Statement by the Constitutional Law Committee on the Government bill with proposal for law on data protection in connection with electronic communication, and on amendment of certain laws connected with it]

GrUU 37/2005. Grundlagsutskottets utlåtande om regeringens proposition med förslag till livsmedelslag samt lag om ändring av hälsoskyddslagen [Statement by the Constitutional Law Committee on the Government bill with proposal for a foodstuffs law and a law on amendment of the Health Protection Act]

GrUU 54/2006. Grundlagsutskottets utlåtande om regeringens proposition med förslag till lag om ändring av alkohollagen [Statement by the Constitutional Law Committee on the Government bill with proposal for law on amendment of the Alcohol Act]
Joint bibliography and list of references

GrUB 14/2002. Grundlagsutskottets betänkande om regeringens proposition med förslag till lag om yttrandefrihet i masskommunikation samt vissa lagar som har samband med den [Statement by the Constitutional Law Committee on the Government bill with proposal for a law on freedom of expression in mass media, and certain laws with connection to it]

Lagberedningens förslag till tryckfrihetslag jämt motiv 1906 [Proposal of the State Legislative Committee for a law on freedom of the press, including grounds 1906]

Lagberedningens manifest angående vissa finsk medborgare tillkommande rättigheter jämt motiv 1906 [Manifesto of the State Legislative Committee regarding certain rights due to Finnish citizens, including grounds 1906]

Lagutskottets betänkande [Report of the Legal Affairs Committee] 1/1918


Parliamentary records

Riksdagens protokoll 6 och 7/12 1918 [Parliamentary record, 6 and 7 December 1918]

Council of Europe documents

Report on Constitutional Amendment, adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009), CDL-AD(2010)001

UN documents


Cases

Sweden: The Supreme Court

NJA (Nytt juridiskt arkiv) 1985, p. 893

NJA 2014, p. 808
Finland: The Supreme Court
HD 2005:82
HD 2011:71
HD 2011:72
HD 2011:101
HD 2013:69
HD 2013:70

Finland: The Supreme Administrative Court
Comment on verdict: Manninen, Sami: Hallitusmuodon 10 §:n ja painovapauslain erityissuhteesta, LM (Lakimies) 1990, pp. 406–434

Great Britain: The Supreme Court
Kennedy vs. The Charity Commission, case [2014] UKSC 20

European Court of Human Rights (The European Court)
Lingens v. Austria, judgment 8 July 1986
Leander v. Sweden, judgment 26 March 1987
Gaskin v. United Kingdom, judgment 7 July 1989
Guerra And Others v. Italy, judgment 19 February 1998
Thoma v. Luxemburg, judgment 29 March 2001
“Wirtschafts-Trend” Zeitschriften-Verlagsgesellschaft mbH v. Austria, judgment 14 November 2002
Roche v. United Kingdom, judgment 19 October 2005
Sdružení Jihočeské Matky v. Czech Republic, decision 10 July 2006
Guja v. Moldova, judgment 12 February 2008
I. v. Finland, judgment 17 July 2008
K.U. v. Finland, judgment 2 December 2008
Társaság a Szabadságjogokért v. Hungary, judgment 14 April 2009
Kenedi v. Hungary, judgment 26 May 2009
Gillberg v. Sweden, judgment 3 April 2012
Youth Initiative for Human Rights v. Serbia, judgment 25 June 2013
Joint bibliography and list of references

Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria, judgment 28 November 2013
Roşianu v. Romania, judgment 24 June 2014
Matúz v. Hungary, judgment 21 October 2014
Guseva v. Bulgaria, judgment 17 February 2015
Arlewin v. Sweden, judgment 1 March 2016

European Commission of Human Rights
Sixteen Austrian communes and some of their councillors v. Austria, decision 31 May 1974
Clavel v. Switzerland, decision 15 October 1987
Grupo Interpres SA v. Spain, decision 7 April 1997

Court of Justice of the European Union (CJEU, formerly CJEC)
Fiona Shevill and others v. Presse Alliance SA, case C-68/93
John Carvel and Guardian Newspapers Ltd v. the Council, case T-194/94
WWF UK v. Commission, case T-105/95
Svenska Journalistförbundet v. Council, case T-174/95
Interporc v. Commission (Interporc I), case T-124/96
Council v. Heidi Hautala, case C-353/99 P
Sweden and Turco v. Council and others, joined cases C-39/05 and C-52/05 P
Commission v. Bavarian Lager Co Ltd, case C-28/08 P
Commission v. Technische Glaswerke Ilmenau, case C-139/07 P
Sweden v. Association de la Presse Internationale and others, joined cases C-514/07 P, C-528/07 P and C-532/07 P
Digital Rights Ireland v. Minister for Communications, Marine and Natural Resources, and others and Kärtner Landesregierung, joined cases C-293/12 and C-594/12
Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, case C-131/12
Carl Schlyter v. Commission, case T-401/12
The Inter-American Court of Human Rights

Other printed sources and literature

A collection of debates in the House of Commons, in the year 1680 [...] (1725). London


Amalia von Helvigs brev … See under Helvig


Baack, Lawrence J. (2013). “A naturalist of the Northern Enlightenment: Peter Forsskål after 250 years”, *Archives of natural history* 40, pp. 1–19

Baack, Lawrence J. (2014). *Undying curiosity: Carsten Niebuhr and the royal Danish expedition to Arabia (1761–1767)*. Stuttgart: Steiner


Joint bibliography and list of references

BnP 1800 = Wälloflige Borgare-ståndets protocoller wid riksdagen i Norrköping år 1800 (1800). Stockholm
Björkstrand, Gustav (2015). ”Kommentar till texterna 9, 10 och 12 angående Koncept, Manuskript och Memorial om religions-frihet 1778–1779”, in: ACSS 3
BnP 1800 = Protokoller hållna hos det hederwärda bonde-ståndet wid riksdagen i Norrköping år 1800. Stockholm
Boyé, Karin (1934). "När vinden vänder sig", *Social-Demokraten* 28/1 1934


Chapman, Paul (2014). See under Internet sources, below


Dellner, Johan (1953). Forsskåls filosofi. Stockholm


Eek, Hilding (1943). “1766 års tryckfrihetsförordning, dess tillkomst och betydelse i rättsutvecklingen”, Statsvetenskaplig tidskrift 46, pp. 185–222


En Ärlig Svensk (1755). Stockholm: Historiographi regni tryckeri


Forsskål, Peter (1756). *Dubia de principiis philosophiae recentioris*. Göttingen

Forsskål, Peter (1759). *Tankar om borgerliga friheten*. Stockholm: Lars Salvius


Förordning angående Censuren (1829) = *Hans Kejserliga Majsts nådiga Förordning angående censuren och bokhandeln i Stor-Furstendömet Finland*, issued in St. Petersburg, 2 (14) October 1829. Helsinki


Hallberg, Pekka; Karapuu, Heikki; Ojanen, Tuomas; Scheinin, Martin; Tuori, Kaarlo & Viljanen, Veli-Pekka (eds.) (2011). Perusoikeudet. 2nd ed. Helsinki: Söderström


Holmgren, Israel (1942). *Nazisthelvetet*. Stockholm: Trots allt

Holmgren, Israel (1943). *Nazistparadiset*. Stockholm: Trots allt


Höppener, Johan Pehr (1754). *Förtekning uppå alla kongl. placater, förordningar, påbud resolutioner, privilegier, manifeste, fredsfördrager, relationer, domar och andre allmenne handlingar som ifrån år 1522. til och med år 1750. på kongl: befallning af trycket serskilt utgångne äro*. Stockholm


Kant, Immanuel (1797). “Svar på frågan: Hvad är upplysning?”, Läsning i blandade ämnen Vol. 1, Nos. 7–8, pp. 15–31


[Memorandum of the Committee on the Constitution, 1853/54, No. 21], in: *Bihang till samtliga riks-ståndens protokoll vid lagtima riksdagen i Stockholm åren 1853 och 1854*, 3rd collection (1854). Stockholm


Krook, Tor (1952). *Anders Chydenius... Samhällsreformator och församlingsherde*. Helsinki: Förbundet för svenskt församlingsarbete i Finland


Lagus, Wilhelm (1875). “Förteckning öfver författarne i Allmän Litteratur-Tidning, utgifven af ett Sällskap i Åbo, år 1803”, Bidrag till kännedomen om Finlands natur och folk 24, pp. 1–28

Lagus, Wilhelm (1877). Petter Forsskåls lefnad. Helsinki


Landgren, Lars-Folke (2002). “1766 års tryckfrihetsförordning och dess omedelbara betydelse för den svenska pressen och dess opinionsbildning”, Historisk tidskrift för Finland 87, pp. 509–537


Larsson, Ola (2004). “Han dömdes för att ha sagt sanningen”, Dagens Nyheter 25/7 2004


Lindberger, Örjan (1944). ”Statskontrollen över litteraturen under Gustav IV Adolfs regering”, *Nordisk tidskrift för vetenskap, konst och industri* 20, pp. 331–347


Manninen, Sami (1990). See under “Legal Cases, Finland: The Supreme Administrative Court” above


Michaelis, Johann David, see also under Buhle


Mirabeau, Honoré-Gabriel Riquetti (1788). *Sur la liberté de la presse*. Place of publication indicated: London


Montesquieu (1990 [1748]). *Om lagarnas anda*. Inledning och urval: Stig Strömholm. Stockholm: Ratio


Nelson, Axel (1926). ”Johan (Hans) Brauner”, *Svenskt biografiskt lexikon* 6, pp. 115–118

Nerman, Ture (1918). *Svarta brigen*. Stockholm: Fram


Nokkala, Ere (2012). ”Peter Forsskål – Kansalaisvapauden puolustaja ja hattuvallan kritikko”, *Auraica* 5, pp. 27–42


[Nordencrantz, Anders] (1756). Ojörgripelige tankar, om frihet i bruk af förnuft, pеннor och tryck, samt huru långt friheten derutimman i et fritt samhälle sig sträcka bör, tillika med påfölgen deraf. Stockholm. [Printed 1765, but confiscated until 1760.]

Nordencrantz, Anders (1761). *Försvar af riksens höglofl. ständers och riksdagsmäns rättigheter [...]*. Stockholm

Nordencrantz, Anders (1767). *Bekymmerslösa stunders menlösa och owälduga tankar, om de betydande anmärkningar, som af en hedervärd landman år 1765 i trycket äro utgifne [...] wid en skrift, kallad Tankar om yppighet och öfwerflöd [...]*. Stockholm

Nordencrantz, Anders (1769). *Tankar om hemligheter, tysthets-eder, censurer, inquisitioner, urtima-domstolar, twång emot, och wåld öfwer menniskjors förnufts förmögenheters bruk, samt deras wärkningar i Sverige i synnerhet, 2.* Stockholm


und die audiovisuellen Materialien in Parlaments- und Parteiarchiven/Access to parliamentary records and audio-visual materials in archives of parliaments and political parties. Sankt Augustin: Academia-Verlag


vaikutuksesta suomalaisen sananvapauden rajoihin joukkoviestinnässä. Helsinki: Wickwick


[Porthan, Henrik Gabriel], *Henrik Gabriel Porthans bref till Mathias Calonius*, ed. W. Lagus, 1–2 (1886). Helsinki: Svenska littertursällskapet i Finland


RAP 1800 = *Protocoller, hållne hos högloflige ridderskapet och adeln wid riksdagen i Norrköping år 1800*, 1–2 (1800). Stockholm


Samling = *Samling af instructioner rörande den civila förvaltningen i Sverige och Finnland*, 1 (1856), ed. C. G. Styffe. Stockholm

Schäuman, Georg (1908). *Biografiska undersökningar om Anders Chydenius*. Helsinki: Svenska litteratursällskapet i Finland


SFSV = *Svenska författare utg. av Svenska Vitterhetssamfundet*, 1– (1910–). Stockholm: Svenska Vitterhetssamfundet


Sundén, Johan Magnus (1925). De romerska antikvitetera till de studerandes tjänst. 2nd ed. Uppsala & Stockholm: Almqvist & Wiksell


Sveriges ridderskaps och adels riksdags-protokoll, see under RAP


Thulin, Olof (publ.) (1941). 1941 års tryckfrihetslagstiftning jämte lagtexter. Stockholm: Nordiska bokhandeln


Upsala stads- och läns tidning (1821–37). Uppsala: Palmblad & C:o


Vesikansa, Jyrki (2007). See under Internet sources, below


“Årstrycket” = laws, ordinances, decrees, proclamations, instructions, tariffs, regulations, etc. issued by the Swedish State administration up until 1833 (searchable by date in the “Äldre svensktryck” database, <http://libris.kb.se/form_extended.jsp?f=svetryck>)


**Internet sources**


Kawohl, Friedemann: Commentary on the privilege granted by the Bishop of Würzburg (1479), in: L. Bently & M. Kretschmer (eds.), Primary sources on copyright (1450–1900), <http://www.copyrighthistory.org>

Litteraturbanken, <http://www.litteraturbanken.se>


Translations of the 1766 Freedom of the Press Act, electronically available


Translations of some relevant acts


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vi schetka med Egen Hand underskrifvit och med Mårt
Kongl. Sigill bekrästa iåtit. Stockholm i Råd-
Tammaren den 2 December 1766.

ADOLPH FRIEDRICH.

Joh. Rosir.
Kongl. Maj:t:s
Rådige
Skrift- och Tryck-friheten;

Tryckt uti Kongl. Tryckeriet.
The 1766 Freedom of the Press Act served as the starting point for the subsequent development of legislation on the principles of freedom of the press and freedom of expression. One of the purposes of this book is to enhance understanding of the long history of these principles, as well as to shed light on their establishment and significance through fresh insights. The tradition of press freedom is currently facing a world characterised by rapid developments. One of the main intentions of this book has been to describe a living heritage that had its beginnings in 1766.
A Freedom of the Press Act was adopted by the Riksdag in 1766. The Act also established the Principle of Public Access to Official Documents, that is, that everyone is entitled to access documents kept by public authorities. The Freedom of the Press Act was the first of its kind in the world.