

THE LEGACY OF PETER FORSSKÅL

250 Years of Freedom
of Expression

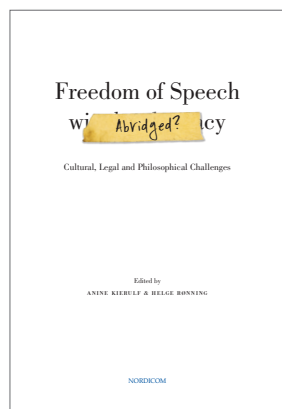
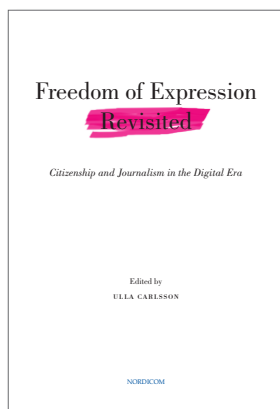
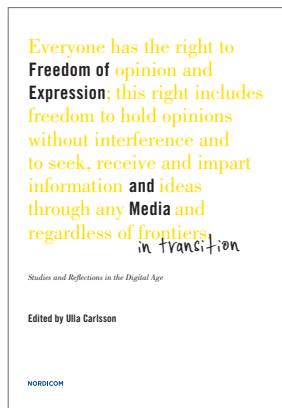
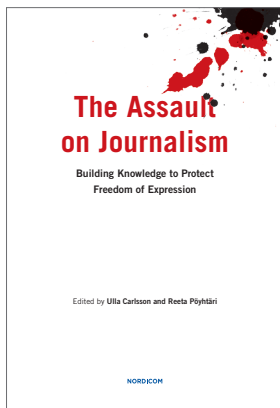


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PROJECT FORSSKAL

Project Forsskal began 1992. Karel Kodeda informed David Goldberg about Forsskal's 1759 pamphlet (banned in 1760) which promoted the right to access information as well as freedom of expression. The original members (see <http://www.peterforsskal.info/about.html>) made the first-ever translation into English of *Tänkar om borgerliga friheten* [Thoughts on Civil Liberty] from the uncensored manuscript (<http://www.peterforsskal.info/thetext.html#thoughts>).

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The picture on the cover was painted in 1760 by Paul Dahlman shortly before Peter Forsskål left Sweden for Copenhagen and the Arabian Journey. The portrait is the property of Uppsala University.
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Foreword

Ulla Carlsson and David Goldberg

In 2016, the world commemorated the sestercentennial adoption of *His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press*. The passage of the *Ordinance* in 1766 in Sweden – which at the time comprised today's Sweden and Finland – was preceded by intense political and scholarly debate. Peter Forsskål put himself at the centre of that debate, when he in 1759 published the pamphlet *Tänkar om borgerliga friheten* [Thoughts on Civil Liberty], consisting of 21 paragraphs – paragraphs setting out his thoughts advocating against oppression and tyranny and championing civil rights for everyone.

Peter Forsskål (1732-1763), born in Helsinki, is widely known as one of Carl Linnæus's most promising disciples. He collected botanical and zoological specimens as the naturalist on an expedition (commissioned by the King of Denmark) to Egypt and 'Felix Arabia', modern-day Yemen. He was brilliant – and stubborn.

Forsskål thought that civil rights are best defended by the institutions of 'limited Government' and almost 'unlimited freedom of the written word'. However, the intellectual catalyst for the 1766 law can be found in paragraph 21, where he sets out the conditions for the important right of freedom to *contribute to society's well-being*: it must be possible for society's state of affairs to become known to everyone – access to information of public interest – and it must be possible for everyone to speak his mind freely.

The *Ordinance* is an amalgam of these two rights. On the one hand, it prohibits prior censorship, although it does detail several matters that are unlawful to express. On the other hand, it sets out the categories of official information that can be legally accessed. It is this latter aspect that constitutes the truly radical dimension of the *Ordinance* – leading it to be considered the world's first right to information law.

The pamphlet was privately printed by Lars Salvius in Stockholm on 23 November 1759 after Uppsala University refused to publish it. On the same day, it was ordered to be withdrawn from circulation by the Registry College [Kanslikollegium] because it espoused ‘dangerous principles’: advocating the benefits of religious freedom and publicly questioning religious beliefs, as well as urging the abolition of privileges. Ironically, Linnaeus, then the Vice-Chancellor of Uppsala University, was ordered to retrieve the copies Forsskål had distributed around town and to the bookshop. Of around 500 copies, only 79 were retrieved, suggesting that Linnaeus didn’t try too hard. A few months later, it was officially banned.

Forsskål’s pamphlet had an impact on society; it expressed rights decades before their inclusion in the American Declaration of Independence (1776) and the French “Déclaration des droits de l’homme et du citoyen” (1789).

The pamphlet, entitled *Tankar om borgerliga friheten*, was translated for the first time ever into English – *Thoughts on Civil Liberty* – from the uncensored manuscript by Project Forsskal and published in 2009. Forsskål’s pamphlet is republished in this book both in English and Swedish (page 27 and 141). The text of the pamphlet is accessible in nineteen languages and dialects in addition to the original Swedish (see www.peterforsskal.com).

Historical perspectives are fruitful in many respects – and this is why Forsskål’s words still resonate. They are a reminder of how the *Ordinance* was adopted – through the link between freedom of expression and press freedom and the desire by the political Opposition to know what Government knows. They also recall the early tradition of civil rights in the Finnish and Swedish political debate.

But we must be careful not to use the tracks of history to create myths about today. When pessimism about the future prevails, it is tempting to use history to say something about the present. So, let anniversaries like the one concerning the *Ordinance* be used as a starting point for debate – to discuss our history and where we stand now in terms of freedom of expression, the right to information and freedom of the press.

A seminar and a publication

It was against such a backdrop that a seminar was arranged focusing on Peter Forsskål, his work and legacy, entitled *The Legacy of Peter Forsskål. 250 Years of Freedom of Information*. The seminar was organised as a side event, part of UNESCO's World Press Freedom Day in Helsinki 3 May 2016, and co-organised by the National Archives of Finland, Project Forsskal and the UNESCO Chair on Freedom of Expression, Media Development and Global Policy at the University of Gothenburg. A panel discussed Forsskål's legacy, as well as its impact on contemporary press freedom and right to information legislation in Forsskål's home country, regionally and globally.

During the seminar, the idea of a publication based on the proceedings was born – proposed by the UNESCO Chair at the University of Gothenburg. Fortunately, the contributors were willing to take the time to revise their manuscripts for publication. In order to make it an even more comprehensive book, new authors have been added during the process leading up to publication.

In the first section of the book, David Goldberg, Project Forsskal founder and Director, gives an introduction to Forsskål's life and work, followed by the English translation of Forsskål's text, *Thoughts on Civil Liberty*.

Three key chapters are presented in the second section of the book. In the first chapter, Ere Nokkala, Finnish researcher at Göttingen University – the same university where Forsskål studied from 1753 to 1756 – argues that political theory and not only daily politics played a significant role in the making of the world's first fundamental law regarding the right to information. In the following two chapters, Johan Hirschfeldt, former President of the Svea Court of Appeal in Sweden, and Kaarle Nordenstreng, Professor Emeritus, Faculty of Communication Sciences, University of Tampere, Finland, present and discuss the history and today's situation concerning freedom of expression, freedom of the press and the right to information in Sweden and Finland, respectively.

The third section of the publication contains short chapters where the authors present their reflections on and insights into the legacy of Peter Forsskål's ideas. A global perspective is provided by Frank La Rue, Assis-

tant Director-General of Communication and Information at UNESCO; he concludes that the call of Peter Forsskål is still alive and more necessary now than ever. Helena Jäderblom, Judge and Section President of the European Court of Human Rights in Strasbourg, reflects on the state of public access to information today from a European perspective. The Editor-in-Chief Stefan Eklund at the regional newspaper, *Borås Tidning*, in Sweden, discusses how newspapers can best preserve their freedom of expression when this freedom is being threatened in both old and new guises in the digital era.

The book also contains an overview of the legislation on access to information in the Nordic countries – Sweden, Finland, Denmark, Norway and Iceland – as well as European and international rules.

We hope that this work will contribute to knowledge development, and perhaps also stimulate national, regional and global discussions about freedom of expression, freedom of information and freedom of the press – even in this era of globalisation and digitisation. The fundamental issue remains the same regardless of time: violence against people who exercise their right to freedom of expression and information constitutes a serious assault on freedom of expression and, as such, the ultimate act of censorship.

Finally, our thanks to all of the authors who made this book possible and the officials at UNESCO and the National Archives of Finland for facilitating the May 2016 seminar.

Introduction

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Who Was Peter Forsskål?

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Thoughts on Civil Liberty

Peter Forsskål

Who Was Peter Forsskål?

David Goldberg

As with Caesar's Gaul, which was divided into three, Peter Forsskål¹ is really three people: a globally-celebrated natural scientist; a virtually unknown pure philosopher, critic of Christian Wolff; and a banned pamphleteer who wrote about civil liberties. He lived for only 31 years – a short life, even by the standard of his time.² It was, however, a richly productive one, encompassing a breadth of subjects and areas and achievements that is unimaginable in today's world: natural history; exploration; promoting, experientially, enlightenment thinking/values; and pure philosophy. This chapter mainly focuses on his banned pamphlet.

Forsskål and his family

The best source about Forsskål and his wider family is an article by Marjatta Rautiala: 'Family background of Peter Forsskål, Linnaean Disciple born in Finland'.³

Rautiala notes that the family name appears as Forsskål, Forskål, Forsskåhl or Forskåhl; he mainly used Forsskål about himself and Forsskåhl for his father and other relatives. Although his first name is usually given in English as Peter, other common forms are Petter, Pehr and Petrus. He himself seems to have preferred Petrus. Forsskål wrote about himself:

I was born in Helsinki on 11 January 1732. My father is Dr Johan Forsskål who now [1756] occupies the office of Consistory Assessor at Stockholm and Pastor of the church of Mary Magdalen. I was first of all educated at home by my father; afterwards I learned my basics with my maternal uncle Dr Jacob Hartmann who is now the Sub-Librarian of Åbo Academy. Under his guidance I enrolled at Uppsala University and joined the Uplands nation in 1742.⁴

Forsskål's mother was Margareta Kolbeckius, born in the parish of Kolbeck (Kolbäck) in Västmanland, Sweden, as the second child of assistant priest Jonas Kolbeckius and his wife Catharina Sevenbaum. Margareta had a short life; she died in 1735 in Helsinki after eleven years of marriage. Peter was three at the time of his mother's death. His father was Johannes Forsskåhl, a distinguished clergyman and a key person for Peter. The two were reportedly close to each other; before he went on the expedition sponsored by the Danish King, he commissioned a portrait to be given to his father.⁵

Johannes was single for many years after Margareta had died. He married again in 1738 Catharina Fridelin from Korppoo, southern Finland where her parents were the vicar Nils Fridelin and Maria Törnroos. Fridelin was especially interested in the Greek language – he even published poems in Greek. He died the same year as their daughter Catharina was married. Peter had three older brothers, all born in Stockholm, and a younger half-sister.⁶

Her name was Johanna Catharina Forsskål. Unfortunately I don't know her date of birth but what I do know is that she was married to a man called Jonas Albom, who was "landssekreterare" (chief of a county secretariat). Their daughter Johanna Sofia Albom 1764-1788, which I believe was their only child, married my ancestor Samuel Jakob Gyllenadler in 1787 - May 10. Samuel Jakob later became "landshövding" (county governor) in Nyköping. Sofia gave birth to Claes Samuel Jonas Gyllenadler 1788 February 24 – and a twin sister who died the next day as did Sofia. So they were married less than a year and the birth of her children took her life. C Samuel Gyllenadler inherited his grandparents' estate Näs outside of Stockholm (1794) which he later traded for Salnecke in 1830 where our family has lived ever since.⁷

After spending his childhood in Finland, at that time the eastern provinces of Sweden, Peter Forsskål moved to Sweden proper with his family when his father changed his position as a vicar from Helsinki to Tegelsmora in the vicinity of Uppsala. At University, he studied philosophy, oriental languages and natural history in Uppsala and Göttingen.

Uppsala and the development of a doubting, empirical scientist

It is strange to modern thinking that anyone could have enrolled at (Uppsala) University at ten years of age. However, approximately 30 per cent of students at the time were under fifteen. Forsskål studied languages; theology; and natural sciences, becoming especially interested in botany. Finding the atmosphere there rather restrictive, he decided to leave Uppsala, and went to continue his studies at the Georg-August-Universitat Goettingen, signing in on 13th October 1753.⁸ He was awarded a Guthermuth Travelling Scholarship, which was set up in 1726 (remarkably, it still exists to this day). Gunilla Jonsson summarises Torsten Steinby's account of proceedings thus:

Forsskål applied for the scholarship in 1751, and to be able to get it he had to undergo an examination "pro obtinendis honoribus philosophicis" at the faculty of theology. Forsskål was one of 15 students to undergo this examination on March 26 1751. It was a fairly simple exam, and all students got "approbatur", Forsskål alone was noted for exceptionally "beautiful knowledge" in the minutes of the exam.⁹

Despite his formidable intellectual bent of mind, Forsskål was the very opposite of an ivory-tower, armchair academic, professional philosopher or scientist. He disapproved of scholars burying themselves in their theories or their offices and shared the opinion expressed by David Hume that,

... learning has been as great a loser by being shut up in colleges and cells, and secluded from the world and good company ... Even philosophy went to wrack by this moaping recluse method of study, and became as chimerical in her conclusions as she was unintelligible in her stile and manner of delivery. And indeed, what could be expected from men who never consulted experience in any of their reasonings, or who never searched for that experience, where alone it is to be found, in common life and conversation?¹⁰

Three examples illustrate the point.

First, Forsskål joined, as the natural scientist, an expedition to “Felix Arabia” commissioned by the King of Denmark which set off in 1761.¹¹ It was first proposed by Goettingen’s Michaelis in a speech at the Goettingen Academy 1753. Tellingly, Forsskål writes in his travel diary that although a ‘thorough knowledge of the local language, geography and history is the most suitable preparation for a traveller to any country’, in his situation (given the potential for encountering ‘audacious’ and ‘predatory’ Arabs in the interior of the peninsula),

...it needed something more than a mere craving for novelty for anyone to dare to undertake such a journey...a heroic temperament was needed as well; *one had to be prepared to give one's life in the service of science*. This sort of attitude is seldom found among those who devote themselves to learning; they find it more acceptable to consume their health and strength in the more relaxed atmosphere of their book-lined studies.¹² (italics added)

Second, when a landed proprietor claimed in a magazine that one kind of cereal could be changed into another through plant breeding, Forsskål not only wrote six contributions in the same magazine to demonstrate the absurdity of that assertion, but also, just to make sure, performed a trial cultivation.¹³ Third, the Danish King’s expedition took months to really get going because of bad weather. Forsskål could not remain idle. In his travel diary he writes,

One might well imagine that my calling and disposition as a natural historian would not have found much scope on the wide expanse of a tempestuous sea during the severest months of winter. These seasonal storms gave us plenty to worry about before we could start making learned investigations. But I could never have survived by staying idle even though this was only the beginning of a journey which was expected to yield the most remarkable discoveries when we eventually reached our destination.¹⁴

So, he set about assessing the degree of salinity in seawater,

Establishing the degree of salinity of seawater is a science as yet in its infancy and requires chemical analysis rather than a hydrostatic

approach. So I can't take responsibility for the accuracy or otherwise of the results I achieved with my water-tester, a phial with a weight attached and a tube graded in proportion, so that the phial (so I've been told), sinks lowest in clean fresh water; ending one degree higher for every quintin of salt dissolved in one skålpund of water.¹⁵

After Forsskål's death, his mentor Carl Linnaeus received seeds, he had sent earlier. Linnaeus named the species of nettle *Forsskaolea tenacissima* after his pupil.¹⁶ Emeritus Professor Gerhard Wagenitz, professor of systematic botany, Georg-Augustus-Universität Göttingen, regards this as rather complimentary, as it means the plant – and therefore Forsskål – was capable of surviving even in inhospitable environments (the species having rather tough fibres). Finally, his Georg-Augustus Professor, Johann David Michaelis, who had recommended him for the expedition, wrote,

I have never known a greater doubter and a more headstrong disputant as he. In fact he had very often made me tired with his doubts and disputes...¹⁷

In sum, Peter Forsskål seems to have been intellectually brilliant; a natural “doubter” especially regarding claims about the natural world; capricious; prone to anger; spirited; headstrong; stubborn; disputatious; and easily provoked. A contemporary assessment can be gleaned from the blurb for the 2013 *Forsskål Symposium* at Uppsala University. It describes him as ‘The provocative scholar’ and goes on,

A characteristic of Forsskål was his ability to question established practices and authorities, he was troublesome, and, some might even say provocative in his relation to the authorities.¹⁸

What, though, really comes across most strongly about Forsskål is that he was a person of the highest scientific integrity, devoted to the pursuit of *scientia*. He argued so tenaciously with people, seeming always to want the last word, but only because he was committed to scientific truth and expected no less of everyone with whom he came into contact. When the third edition of *Dubia (post)* was published in 1760, the title page noted

additional notes and supporting pieces, many of which document the scholarly reaction to the thesis and Forsskål's response to criticisms.¹⁹ Finally, Michaelis' summation about Forsskål was that,

I knew in general, that he did not easily yield belief, without being compelled by good reasons, and that he was a lover of the truth; and his dissent from my philosophy was to me a pledge, that out of deference to my opinions and views, he would never suppose himself to hear or see anything in the East, which he did not really hear and see.²⁰

*Tankar om Borgerliga Friheten/Thoughts on Civil Liberty:
freedom of access to information and freedom to publish*

Forsskål wrote one of the least known – and hence least acknowledged – jewels of Enlightenment literature: *Tankar om Borgerliga Friheten/Thoughts on Civil Liberty*. He expresses his socio-political thinking in – an admirably brief – 21 paragraphs.²¹ The fact that a natural scientist wrote it at all is in itself noteworthy and a further testament to Forsskål's breadth of endeavours.²² The most basic reason that the pamphlet has been so little known is that it was not translated into any language from 18th Swedish until 2009. In that year, Project Forsskal translated it into English, becoming easily accessible electronically, via its website²³ and also in hard copy, published by Atlantis though this is now out-of-print, available only on-demand.

J. D. Michaelis claims that he deserves the credit for Forsskål's willingness to express himself so robustly, writing

I learned Swedish of him [Forsskal], and said to him once, that the Swedish Vriheet (freedom), was something wholly different from our Freiheit; in Sweden no one could utter his opinion aloud, much less print it; and that was what we call slavery. This was under the domination of the so-called Huthe [one of the two political tendencies, the Hats and the Caps, DG] Our conversation afterwards turned very often upon this point. What I said, fell into so good a soil, that it bore fruit, an[sic] hundred fold. After his return to Sweden he attempted to maintain the freedom of the press; he wrote and printed, and that too against the dominant party. This made a great noise; and he lost his hopes of obtaining

any preferment in Sweden. Indeed, it is related, that a person of high standing, having sharply reprimanded him for his writings, in consequence of his persevering contradiction let fall something about the danger of losing his head. 'True' replied Forsskal, 'but not now'; exhibiting at the same time his appointment from the Danish government to the Arabian expedition which he had just received.²⁴

However, Dr. Hans Erich Boedeker (University of Goettingen) is of the opinion that Forsskål might also have been strongly influenced by Gottfried Achenwall.²⁵ Thus, it seems Michaelis might have given himself too much credit for Forsskål's thinking on this topic.

Both the Faculty of Philosophy at Uppsala University and the Kanslikollegium chose not to publish it (it was initially presented to the Faculty as *de libertate civili*). The Faculty judged his ideas as "very delicate". The Kanslikollegium went further, calling them "dangerous principles". What irked most was Forsskål's advocacy of the benefits of religious freedom and approving public questioning of religious beliefs; also, his advocacy of the abolition of privileges touched a real nerve. His view was that 'Each and every inhabitant should have a reasonable share in public burdens and benefits'. Undaunted, Forsskål turned to a commercial printer in Stockholm, Lars Salvius; 500 copies *in Swedish* were printed and distributed having first collaborated with the Censor Librorum, Niklas von Oelreich²⁶ who passed the text, albeit with some changes and cuts.

On the day of publication in Swedish thus facilitating wider readership, November 23 1759, the pamphlet was ordered to be recalled. In a real twist of fate, Linnaeus, Forsskål's mentor, was then the Vice-Chancellor of Uppsala University, thus, he was the one who was ordered to retrieve the copies which Forsskål had taken to Uppsala for distribution that November day. However, it seems that Linnaeus did not try too diligently to comply with the order. Only about 10 per cent+ – the figure of 79 is cited – ²⁷ of the 500 copies printed were found and confiscated. But, its continuing circulation and consumption motivated its banning, on the 28th February 1760.²⁸ Thanks to the *Linnaean Correspondence*, summaries of letters giving more detail about the immediate reaction to the pamphlet's printing are available.²⁹

Amongst the topics raised in the pamphlet are:

- the right of appeal against questionable or flawed judicial sentences
- fairer taxation
- abolishing the nobility's reserved rights to higher offices (this was very radical at the time)
- reforming the guild system
- establishing schools for the children of the common citizens
- ensuring maximum (not absolute) freedom of expression: the only alternative to violence is freedom of the printing press. 'A wise government would rather let its subjects express their displeasure with pens than with other weapons'

This last mentioned is a very significant aspect of *Tankar*. In paragraph 9, he states that the only alternative to violence is freedom of the printing press. In his subsequent letter to the king appealing against the treatment of his pamphlet, he is even more outspoken:

... it is obvious, Your Majesty, that there are discontented people in every realm. That those are not few in Sweden is shewn by oft contemplated and actual rebellions. It is equally well known that there are only two ways of avoiding harmful consequences of discontent, one requires ink, the other blood... However, if these amenable means [...] are repudiated then a government has no resort but to meet violence with power, and with the destruction of several lives perhaps not eradicate but merely hide and sometimes increase the discontent, so that at a new occasion it may burst out anew.³⁰

However, the key aspect of the pamphlet is where he comes out fully in defence of public transparency, or in today's parlance "open government". Nothing, he wrote, concerning the 'domestic welfare' should be withheld from 'the eyes of the inhabitants' – not for its own sake, or to satisfy idle curiosity, but because 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...' ³¹ This links Forsskål intellectually to the world's first freedom of information law, formally entitled *His Majesty's Gracious*

*Ordinance Relating to Freedom of Writing and of the Press.*³² His death in 1763, in Jerim in modern-day Yemen, meant he obviously was not a direct participant in the legislative process which led to the adoption of the law on 2nd December 1766.³³

Tankar 2.0

A second edition of the pamphlet was published in 1792. Gunilla Jons-son has published an account about whom she thinks published it, namely, Bengt Holmén, bookseller and publisher in Stockholm (1731-1794). She has also published as well a table detailing the differences between the two editions.³⁴ Factors contributing to the publication of this edition were the French Revolution and the adoption in Sweden of a new law on the freedom of the printed word (July 11th 1792). The second edition has an extended title, *Thoughts on civil liberty, on account of the principle of freedom among the French, which is now so much discussed / Tankar om borgerliga friheten, i anledning af den nu så allmänt omtalade frihets-principen hos fransoserna*; and ‘a note to § 6, which, as Thomas von Vegesack suggests, most probably has been added to soften the criticism of the king in this paragraph and of absolutism in the preceding one.’

Endnote

Remarkably, *Thoughts on Civil Liberty/Tankar om Borgerliga Friheten*, this little-known jewel of Enlightenment literature, states almost all the rights that 30 years later were to be found in the French *Déclaration des droits de l’homme et du citoyen* – though the extent to which there was an Enlightenment in Sweden or in the so-called “Northern Periphery” is debated.³⁵ The only right in the French Declaration which is missing in Forsskål’s text is the right of individuals to freely choose and practice their religious beliefs. Among those passages that the censor forced Forsskål to cut out was a paragraph where he maintained that ‘divine revelations’ cannot be harmed by being questioned. As von Vegesack states

Political absolutism had ended in Sweden, but not the religious one.

He goes on to state that

The significance of Forsskål's theses can hardly be overrated. His book is a summary of those demands which in the Europe of Enlightenment could be put to society.³⁶

Finally, let the last word go to Alan Charles Kors, editor of the *Encyclopedia of the Enlightenment* (OUP 2002):

Forsskal's work should occupy a major place in the history of liberty.³⁷

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Notes

- ¹ See generally, <http://www.peterforsskal.info>
- ² On 11 July 2013, the 250th anniversary of Forsskal's death, Jonas Nordin, a member of Project Forsskal, published an article about him and his legacy in *Svenska Dagbaldet*: 'Forsskål lade grunden för det fria ordet', http://www.svd.se/kultur/understrecket/forsskal-lade-grunden-for-det-fria-ordet_8336690.svd; see also, J. Nordin, 'Whistle-

- blower Peter Forsskål: A Linnaeus Apostle in Struggle for Civil Rights', <http://www.ikfoundation.org/ilinnaeus/ireports/whistleblower.php>; and see also, Björn Wiman's article in *Dagens Nyheter*, 3 November 2013, 'Tänd ett ljus i helgen för en av upplysningens hjältar', <http://www.dn.se/kultur-noje/bjorn-wiman-tand-ett-ljus-i-helgen-for-en-av-upplysningens-hjaltar/>.
- ³ Marjatta Rautiala, 'Family background of Peter Forsskål', http://www.peterforsskal.com/documents/Linnaeus_27-1_March_2011_complete_web_24_Feb.pdf; and see also, Marjatta Rautiala, 'Petter Forsskålin juuret ja lapsuus Suomessa' [Peter Forsskål's roots and childhood in Finland]. Helsingin pitäjä 2010. Vantaa-Seuran vuosikirja [Yearbook of the Vantaa-Society] nr. 42, p. 18-35.
 - ⁴ See, <http://www.peterforsskal.info/gottingen3.html>; see also, http://www.djshaw.co.uk/index.php/publications/in_progress/peter-forsskal/viae-ratio-1756/
 - ⁵ The Gyllenadlers owned the portrait of Forsskål; it was hung in the family home, Salnecke Slott, (above the flat-screen television in the lounge). It was purchased by Uppsala University in October 2013. Until proven otherwise, the artist was Paul Dahlman.
 - ⁶ In 2016, several Forsskåls attended the UNESCO event, thanks to Marjatta Rautiala who emailed the present author: 'I'm glad to note that also Forsskål's relatives are coming. I've tried to keep them ajour [sic] on happenings concerning Peter. They are rather faraway relatives – the relationship extends all the way to the sixteen hundreds, so the family branches have separated long ago. But anyway they belong to the nearest Forsskåhls here in Finland. Per Forsskåhl is coming with his wife Ingegerd. I have met them a few times.'
 - ⁷ The information was given to the author in a personal email from Nils Gyllenadler, 3/11/2009.
 - ⁸ Fredrik Thomasson points out that the town was a 'frequent destination for Swedish students and scholars.' and that the University was rather 'secularized', the Theology Faculty not being so central to its life or in a position to control or censor other Faculties, *The Life of J. D. Åkerblad: Egyptian Decipherment and Orientalism in Revolutionary Times*, Chapter 2, p. 24, <http://bitly.com/17eUkU8>; Guttermuth scholarship: see, 'Guthermuth travel scholarships (1726): Travel scholarships for students of theology and young, unsalaried academic teachers are awarded annually on the basis of recommendations from the Faculty of Theology by the dean of the cathedral in Stockholm and the pastor of the German parish in Stockholm. The foundation is administered by the parish of the cathedral in Stockholm', [http://www.uaf.uu.se/UL/se/ScholarshipHandbook%20\(2\).pdf](http://www.uaf.uu.se/UL/se/ScholarshipHandbook%20(2).pdf)
 - ⁹ Torsten Steinby, *Peter Forsskål och Tankar om borgerliga friheten*. Helsingfors, Hufvudstadsbladet, 1971; summary in personal email to the present author; for Gunilla Jonsson, see <http://www.peterforsskal.info/about.html>
 - ¹⁰ 'Of Essay Writing' in *Essays, Moral and Political*, 1742, Volume 2, <http://www.sacred-texts.com/phi/hume/of4.txt>
 - ¹¹ See, 'The Arabian Journey 1761-1767', <http://www.kb.dk/en/nb/samling/os/naeroest/cneksp.html>
 - ¹² See, *post* fn 13.
 - ¹³ See, <http://www.peterforsskal.info/thetext.html#commentary>

- ¹⁴ Translation by Silvester Mazzarella of *Resa till lycklige Arabien – Petrus Forsskåls dagbok 1761-1763* and published as the third of five items in IK's 'The Linnaeus Apostles' volume 4, pages 281-380, Hansen, Lars (editor-in-chief), *The Linnaeus Apostles – Global Science & Adventure*. 8 vols. 11 books. London & Whitby: The IK Foundation & Company, 2007-2012. [Volume 2-7 (9 books)]; see <http://www.ikfoundation.org/ibooks/>; the diary's content is actually a copy in another's hand, and was first published as *Resa till lycklige Arabien: Petrus Forsskåls dagbok 1761-1763*. Almqvist & Wiksell, 1950.
- ¹⁵ *ibid.*
- ¹⁶ <http://www.wildflowers.co.il/arabic/picture.asp?ID=2186>
- ¹⁷ J. D. Michaelis, *Lebensbeschreibung*; for Michaelis himself, see, <http://www.uni-goettingen.de/en/104130.html>; see also http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0014_0_13821.html
- ¹⁸ See, <http://www.uppsalaforum.uu.se/events/>
- ¹⁹ See, <http://www.peterforsskal.info/gottingen2.html>
- ²⁰ From *Fragen an eine Gesellschaft gelehrter Manner u. s. w. Franckf. 1762*, quoted in *Biblical Repository and Classical Review*, fn 23, Appendix, p. 654; the best account of the expedition is by Lawrence J. Baack, *Undying Curiosity: Carsten Niebuhr and The Royal Danish Expedition to Arabia (1761-1767)*. Franz Steiner Verlag, 2014.
- ²¹ Thomas Munck writes 'So few 18th century Swedish political tracts are available in translation that the present [sic] publication is in itself an important landmark.', in Thomas Munck, Review of *Peter Forsskal, 'Thoughts on Civil Liberty / Tankar om borgerliga friheten* (2012) 51(1) *Scandinavica*; Vesa Oittinen dubs Forsskal as the "Radical Enlightener", see Vesa Oittinen, 'Peter Forsskål, a Radical Enlightener', in Wolff, Charlotta; Kaitaro, Timo and Ahokas, Minna (eds.) *The Enlightenment: Critique, Myth, Utopia*, Proceedings of the Symposium arranged by the Finnish Society for Eighteenth-Century Studies in Helsinki, 17-18 October 2008. Oxford: Peter Lang 2011, at 133.
- ²² See, Vesa Oittinen, 'Peter Forsskål, a Radical Enlightener', in Wolff, Charlotta; Kaitaro, Timo and Ahokas, Minna (eds.) *The Enlightenment: Critique, Myth, Utopia*, Proceedings of the Symposium arranged by the Finnish Society for Eighteenth-Century Studies in Helsinki, 17-18 October 2008. Oxford: Peter Lang 2011, at 133.
- ²³ See, fn 1.
- ²⁴ J. D. Michaelis, *Lebensbeschreibung*, p. 65; in something of a coincidence, Michaelis's book, *Compendium Theologicae Dogmaticae*, published in Göttingen 1760, was banned in Sweden by the Kanslikollegium in early November 1760.
- ²⁵ http://www.theodora.com/encyclopedia/a/gottfried_achenwall.html
- ²⁶ <http://bit.ly/2nFtLap>
- ²⁷ Thomas Von Vegesack states: 'Out of the 500 printed copies of *Thoughts on Civil Liberty* only 79 were confiscated and destroyed.' <http://www.peterforsskal.info/thetext.html#commentary>
- ²⁸ For the proclamation banning publication, see <http://www.peterforsskal.info/firstedition.html>
- ²⁹ Translated by Sten Hedberg, Assistant Librarian, Uppsala University (ret'd), see, <http://linnaeus.c18.net/>

- ³⁰ See, <http://www.peterforsskal.info/thetext.html#commentary>; some credit should be given to the printer Lars Salvius, whom some say may have had a hand in its content, see <http://oxfordindex.oup.com/view/10.1093/oi/authority.20110803100438952>
- ³¹ Tankar, Para 21.
- ³² See, <http://www.peterforsskal.info/1766law.html>; Thomas von Vegesack notes that 'The new law had important shortcomings in two respects. Censorship was maintained for theological publications. And the spoken word was not protected. In that respect, further progress was attained in the USA when the famous First Amendment to the Constitution was adopted in 1791.'
- ³³ Ere Nokkala's chapter assesses Forsskal's impact on the law.
- ³⁴ The first advertisement for it appeared on 10th December 1792, see, <http://www.peterforsskal.info/secondedition.html>; see also <http://www.peterforsskal.info/secondedition.html> and <http://www.peterforsskal.com/differences.html>. Note that during 2017 a revised version of both the 1759 pamphlet and the document detailing differences between it, the 1792 edition and the original MS will be published on the Litteraturbanken website, see, in general, <http://litteraturbanken.se/#!/start>
- ³⁵ The main sceptic is Tore Frängsmyr, *Sökandet efter upplysningen* [Searching for the Enlightenment] (1993); see, however, Artemyeva, T., Oittinen, V. K. & Mikeshin, M. (eds.) 2010, *The Philosophical Age. Almanac*. Issue 36. The Northern Lights: Facets of the Enlightenment Culture. The Philosophical Age. *Almanac*, Issue 36, vol. 1-36, vol. 36, *The Philosophical Age*. Almanac edn, St. Petersburg Center for the History of Ideas, Russia, <https://helda.helsinki.fi/handle/10138/24837>
- ³⁶ See, Juha Manninen, 'Anders Chydenius and the Origins of World's First Freedom of Information Act', <http://nsarchive.gwu.edu/NSAEBB/NSAEBB568-FOIA@250/bullet2.pdf>, p 14.
- ³⁷ Personal email to the present author 10/06/2010; for the work, see <http://www.oxfordreference.com/view/10.1093/acref/9780195104301.001.0001/acref-9780195104301>

Peter Forsskål

Thoughts on Civil Liberty

About the manuscript

Quoted from Gunilla Jonsson 'About the text' in *Thoughts on Civil Liberty. Translation of the original manuscript with background*. Atlantis, Stockholm 2009, p. 11-12
(© David Goldberg, Gunilla Jonsson, Helena Jäderblom, Gunnar Persson and Thomas von Vegesack)

The translation (to English) is based on a new and close reading of Peter Forsskål's original manuscript for *Thoughts on Civil Liberty*, 1759, without the cuts and changes of Oelreich, the Censor. We have chosen to work from the original simply because it is the complete text and it is better than the censored version which was published in 1759. In many instances where Forsskål makes a clear statement Oelreich forced him to insert a "maybe" or "perhaps", and Forsskål's radical demand for the freedom of the printing press which as a matter of fact corresponds well with our modern understanding of the concept was changed into phraseology which opens the door for a retained censorship system (§ 7). § 8 of the original, with Forsskål's plea for freedom of printing concerning religious questions, was cut out altogether, and the reference in § 10 to the beneficial effects of religious freedom in Pennsylvania also disappeared.

Forsskål's manuscript is preserved in the National archives of Sweden, call number Kanslikollegiet, Inkomna skrivelser, Serie EXII:18, universitetsärenden 1706-1785. The Censor's changes were inserted in the manuscript by Forsskål's hand but in a different ink than the original was written with. Oelreich's "imprimatur" on the last page seems to be made with the same ink, so one may assume that they worked together on the changes.

The printed version of 1759 has been published several times during the 20th century, the first time in Torsten Steinby's, *Peter Forsskål och Tankar om borgerliga friheten*, 1970. It was also published with parts of the original manuscript inserted in *Gyllene äpplen*, p. 2, 1991 (2.ed. 1995).

During 2017, the text of *Thoughts on Civil Liberty/Tankar om Borgerliga Friheten* will be published on the prestigious Litteraturbanken/the Swedish Literature Bank, see <<http://litteraturbanken.se/start>; <http://litteraturbanken.se/om/inenglish>>. It is the website for reliable digital versions of Swedish classics, directed towards the general public and students and teachers at every level, as well as towards scholars. Additionally to some of the material available on the Project Forsskal website (<http://www.peterforsskal.info>), a new Introduction, by Jonas Nordin, has been prepared; and, the translators of the 2009 English text have taken the opportunity to improve that version – which is reproduced below.



The picture on the cover was painted in 1760 by Paul Dahlman shortly before Peter Forsskål left Sweden for Copenhagen and the Arabian Journey. The portrait is the property of Uppsala University.

Photo: Julia Gyllenadler

Thoughts on Civil Liberty

§.1.

The more a man may live according to his own inclinations, the more he is free. Therefore, next to life itself, nothing could be more dear to man than freedom. No rational being relinquishes or curtails it unless forced to do so by violence or fear of some greater evil.

§.2.

A benefit which is so beloved by man needs no limitation where everyone loves virtue. However, we often yield to vices and wrongdoing. Thus, boundaries should be set for us, freedom should lose its harmful part, and there should only remain such an amount that, according to one's innermost will, one may benefit others and oneself, but harm no one.

§.3.

When this is granted to **each and every member** of society, then there is true **civil liberty**.

So, this means that no one is prevented from doing that which is proper and useful for the community, that every honest person may live in safety, obey his conscience, use his property, and contribute to the well-being of his society.

§.4.

To this **liberty**, the **greatest danger** is always posed by those who are the most powerful in the country by dint of their positions, estate, or wealth. Not only do they easily abuse the power they hold, but also constantly increase their rights and strength, so that the other inhabitants must fear them more and more.

§.5.

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.

And, in many Republics, such as the Polish and Italian ones, which take pride in the hallowed name of freedom, there most people are bondsmen of the high ranking notwithstanding.

§.6.

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. In the name of Autocrats, and by their power, much is often ruled by mean subjects, unworthy of their superiors' grace, but safe by enjoying it. For several reasons, the violence of powerful Rulers is likewise more difficult to remedy. An excessive belief in the holiness of the crowned goes a long way to protect even the most unjust of sovereigns. Many imagine that never can there be too much granted a person who is so much raised above men, who is so close to Divinity. The kings of Barbary play unpunished with the lives of their subjects, being regarded as holy. The Non-Jurors in England make it a matter of conscience not to be faithful towards an unfaithful Royal Family. And, not looking far for examples, when Sweden, during the wars of King **Carl the twelfth**, was depleted in men, provisions and money, this tough Hero* was still believed not to ruin, but rather defend his country. Thus, subjects do not always perceive their Prince's injustice, and if they do know of it, yet they cannot easily free themselves from it. When necessary, alone the princes guard their privileges, alone they rule everything. The benefit and strength of the entire country are gathered in one single person. But, when **some subjects are oppressed by the other subjects**, everyone notices that unfairness; and when several misuse their power all at once, the larger crowd more easily overcomes their disparate aims and powers. Therefore, the reverence of the public and their own power do not grant them security enough. 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.

*See *Enväldets skadeliga påföljder* ("The detrimental consequences of absolutism"), Stockh. 1757.

§.7.

So, the life and strength of civil liberty consist in **limited Government** and **unlimited freedom of the written word**; as long as serious punishment follows all writing which is indisputably indecent, contains blasphemy against God, insults private individuals and incites apparent vices.

§.8.

Divine revelations, wise fundamental laws and the honour of private individuals cannot suffer any dangerous damage by such freedom of expression. Because truth always wins when it is allowed to be denied and defended equally.

§.9.

On the contrary, Freedom of the written word develops knowledge most highly, removes all harmful statutes, restrains the injustices of all officials, and is the Government's surest defence in a free state. Because it makes the people in love with such a mode of government. In England, one does not often hear of dangerous designs against well established fundamental laws. There, however, public disorder can be prevented at an early stage merely through the freely expressed discontent of the public. On the other hand, in a not unknown country,* we have had a significant example of the fact that when an uneven distribution of freedom is defended by hatred and force, people easily resort to violence and desperate steps; that someone who has too little will rather lose everything than, without jealousy and revenge, see too much of society's and his own freedom ripped away by his peers and fellow citizens. Because he who has little to lose, will risk his at a small loss, when he can cause his enemy and his tormentor to lose a lot. This is not exactly admirable, but is common even so. Therefore, liberty must be preserved by liberty. Coercion and suppression of the discontented puts it in utter danger, regardless of whether they have reason for their discontent or not. Therefore, a wise government will rather let the people express their discontent with pens than with other guns, which enlightens on the one hand, appeases and prevents uprising and disorder on the other.

*Denmark.

§.10.

It is mentioned earlier (§ 3) that Civil liberty results in every honest person being able to live in safety, obey his conscience, use his property, and contribute to the flourishing of his society. I will explain each of these points in brief. The law puts our **life** in much safety, as it states that no one may violate an honest person's body and health unpunished. However, one has, even so, to listen to accusers and implement verdicts of judges, even if the accused has not committed any crime. Because society cannot exist without courts of law, and judges are not always impartial.* The people's hate and unrestrained fervour has sometimes even snatched away the most innocent of citizens. No danger is greater than this, to life and reputation at once; and either it cannot be changed, or the freedom to defend oneself publicly might yet serve to calm the wrath of the people and to deter judges from manipulation. Even if that cannot be achieved, then at least the fairest compensation for such a great injustice is that a miserable convict be allowed, as in England, to show to his fellow countrymen that he dies innocent.

*See several publications about trials, judges, and a proper freedom and safety of the written word.

§.11.

Conscience may often be based on false opinions. Which in no way should be tolerated, if their sole objective is the destruction of society and people, like the Jesuits' deceitful rules. However, usually those who seem to be made dangerous by a failing conscience may become good citizens, if only society adapts a little to their delusions. The Mennonites shun oath-taking, but one can just as safely trust their yes and no. Many of them cannot be prevailed on to attack the enemy, but they willingly contribute money for supporting the troops. That differences between religions may exist without disturbing civil unity is amply demonstrated by the fortunate and, through liberty, rapidly populous Pennsylvania. Under liberty itself religious delusions will eventually give way to the power of truth and diminish, whereas they often, when incited to a foolish zeal through persecution, will spread more violently, like a fire under cover. Finally, as there is no place where everyone can be without delu-

sion, it is of little importance whether they fail openly, as in England, or are hypocrites, as elsewhere.

§.12.

In a society people have **property**, partly as a member of the State, partly as an individual. Of the former kind is public income and that which has been purchased with it, together with the public services. Of the latter kind is that which every individual owns. The law should protect both against violence and keep them from being abused. Each and every inhabitant should have a reasonable share in public burdens and benefits. For society is common, as should liberty be also. **The taxes of the country** should therefore not be collected by too large expenditure by some, but, according to their own income, everyone should contribute to the public income. Furthermore, no one worthy of taking up **public offices and positions of honour** should ever be deprived of the hope of achieving them.

§.13.

If suitable tests were required prior to appointment to every public office; if those who had completed such a test were allowed to move up to the next higher office only according to the time they had served in their previous position; and if the first step would belong to the one who first had proved to be skilled for it; then offices would not be in unworthy hands, then family, money, and patrons would not be surer ways to promotion than one's own diligence and skill.

§.14.

No tests are easier or more reliable than the examination of the knowledge and the practice associated with the office. Such are used for Clergymen by us, and for all public officials in China. However, it is no great feat to dislike the best, if one is allowed to ask about anything one wants and judge in any way one chooses. It would, therefore, be necessary to stipulate for each and every office specific knowledge, specific books, specific training and tasks for which one should be publicly accountable.

§.15.

It is easily permitted to use **one's own possessions** for the benefit of oneself and society. However, all kinds of property cannot be so easily acquired by everyone, as would be beneficial for society. No-one can acquire land anywhere he wants, either by labour or payment, although many have more than they cultivate, much to the detriment of the public good. Laws, such as Moses' was among the Hebrews, about each family's modest and eternal piece of land, 3rd Book of Moses, 25:13-15, 23, 24, 40 and 41, or that of Licinius among the Romans about 500 jugera (257 1/7 tunnland¹) therefore serve fairly well both in promoting cultivation of the land and in balancing the rights of the inhabitants.

¹ 1 tunnland = 4936 m²

§.16.

Nothing is more our own than the **powers of our body and mind**; nothing, therefore, would be more reasonable than to be allowed to make a living in a respectable way therewith, to be allowed to practice useful skills and employ knowledge. To freely make a living from agriculture and manufacture, from crafts, trade, and learning should be open to everyone, until the quantity becomes harmful to society.

§.17.

Useful labourers are chased from the **countryside**, as the laws do not permit those in villages and huts whom luck has not allotted any piece of land to enjoy protection, otherwise than by disabilities and old age, which makes them almost decrepit. Therefore, as soon as they want to follow the basic natural urge for freedom and become independent, they have to flee to the towns where they can easily live capriciously or be employed in an undemanding job. However, where, as is the custom in England and Germany, everyone even in the countryside can be master of his cabin, there many labourers remain in their native place, multiply, undertake useful trades, let themselves be hired on farms, and all this more preferable than by choosing city life, remain unmarried, be extravagant, indolent, in order to maintain the affluence of the wealthy, crowd

the noble carriages, kill time with sleep and lechery and be a burden to themselves and their country.

§.18.

To the promotion of **skills** and their freedom, public schools in particular would serve, where one could be fully educated at the pace that one's own diligence and understanding would allow, in all kinds of arts and crafts, and immediately be recognised as a free master in the field one has understood. However, the number of every kind of occupation should be stipulated according to society's need and use.

§.19.

On the contrary, our closed **guilds** and the training of apprentices are great means to sustain idleness, constraint, shortage of people, lechery, poverty and time-wasting.

§.20.

Even the so-called **free arts** themselves are not free in Sweden. Elsewhere, they more deserve the name. In Germany, each person is allowed to publicly teach others everything which he himself has learnt. Furthermore, either one should be prevented from the start from making book-learning one's principal route, or not subsequently be prevented from freely living off the most innocuous trade.

§.21.

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. Much less should peacetime matters

and that which concerns domestic wellbeing be withheld from inhabitants' eyes. Otherwise, it might easily happen that only foreigners who wish harm find out all secrets through envoys and money, but the people of the country itself, who ideally would give useful advice, are ignorant of most things. 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.

God, the Supreme, who watches over the bliss of men, enhance our Swedish Freedom and preserve it for all eternity!

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A Byproduct of Political Struggles

Kaarle Nordenstreng

World's First Freedom of Writing and of the Press Ordinance as History of Political Thought

Ere Nokkala

Abstract

This chapter argues that political thought played a significant role in the making of the world's first *Freedom of Writing and of the Press Ordinance* in Sweden. It is often argued that the *Ordinance* of 1766 was accidental and not the result of political thinking based on deeply rooted conviction. According to this view, it was the result of existing controversies that led the Diet to promulgate the Ordinance. The aim of this chapter is to show that the dichotomy between deeply rooted conviction and existing political controversies is misplaced, because political controversies and political thought were intimately bound together in Sweden during the 1750s and 1760s. This becomes particularly clear through the example of Peter Forsskål (1732-1763), whose short pamphlet *Thoughts on Civil Liberty* (*Tankar om borgerliga Friheten*, 1759) is a prime example of how political theorizing and political life are not detached from each other.

Keywords: history of freedom of the press, intellectual history, history of political thought, *Thoughts on Civil Liberty*, Peter Forsskål

On 2 December 1766, freedom of information and printing became a constitutionally protected right in Sweden. The most interesting aspect of His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press (Kongl. Maj:ts Nådige Förordning, Angående Skrif- och Tryck-friheten) was that it gave citizens public access to official documents and can therefore be regarded as a milestone in the history of transparency. The *Ordinance* was the first of its kind in the world. The ses-tercentennial of the *Ordinance* was duly celebrated both in Sweden and in Finland in 2016. In Finland, the celebrations placed a heavy emphasis on the role a Finnish member of the Estate of the Clergy, Anders Chydenius

(1729-1803), played in creating the *Ordinance*. He was an author of one of the proposals for the *Ordinance*. In Sweden, the celebrations focused on political culture and in particular on the role of the Diet (*Riksdag*) (Marjanen 2017).

Some Finnish writers went so far as to argue that the freedom of writing and of the press *Ordinance* can be considered as an “accomplishment of Chydenius” (Petäjä 2016)¹. Such an exclusive role assigned to Chydenius inspired two emeritus Professors, Matti Klinge of history and Kaarle Nordenstreng of journalism, to address the general public and to argue in the leading Finnish newspaper *Helsingin Sanomat* that the history of freedom of the press is not a history of great men and that the 1766 *Ordinance* was not so much a result of the history of ideas as a result of changes in the inner politics of the Swedish realm (Klinge & Nordenstreng 2016, Klinge 2010).

I regard Klinge’s and Nordenstreng’s attempt at recasting Chydenius’ role as most welcome. The *Ordinance* was not an accomplishment of a single individual actor. The history of freedom of expression is not a history of great men. However, the aim of this chapter is to show that the history of freedom of the press is both a history of inner political struggles and history of political thought. These do not exclude each other. I argue that it is not possible to detach political thought and political life so neatly. Political thought and political theorizing are an integral part of political life itself. Thinkers such as Chydenius and Peter Forsskål (1732-1763)² were using concepts such as civil liberty as arguments in political debates. I will elaborate on my argument that political theorizing is part of political life itself using the example of Forsskål and his pamphlet *Tankar om borgerliga friheten* [Thoughts on Civil Liberty] 1759.

Although I do wish to emphasize that Forsskål and Chydenius were participating with their writings on the Swedish political debates, it is worth noting that the debate on freedom of the press was a wide-spread topic in eighteenth-century Europe and by no means limited to Sweden. Chydenius and Forsskål were familiar with the recent currents in the European debates as mediated through Swedish and foreign literature. Exchange happened through personal contacts as well. From 1753 to 1756, Forsskål studied in Göttingen, which was the leading centre of the German Enlightenment. There he became acquainted with seminal

Enlightenment figures such as Johann David Michaelis (1717-1791), Johann Heinrich Gottlob von Justi (1717-1771) and Gottfried Achenwall (1719-1772). One can argue that freedom of the press was already, at the time, simultaneously a Swedish, European and even a global issue.

Political life and political thought

Internationally, Peter Forsskål has gained even more attention recently than Chydenius has. Forsskål has been regarded as an early advocate of freedom of the press and of the Principle of Public Access to Official Documents [*offentlighetsprincipen*] (Goldberg 2014, Nokkala 2016). It is Forsskål's thesis, written in Uppsala, that has made him more widely known during the past ten years. For a long time, Forsskål's *Thoughts on Civil Liberty* was not much more than a curiosity in the history of censorship in eighteenth century Sweden. The attention that *Thoughts on Civil Liberty* has deservedly received is to a great extent the accomplishment of *Project Forsskal*, directed by David Goldberg.³ Forsskål's pamphlet has been translated into 19 languages and dialects and translations have been launched in Cairo, Tunis and Belgrade, to mention a few places.

In light of the discussions of Forsskål's and Chydenius's role in relation to the birth of the freedom of the press, it is interesting to note that one of the leading specialists on the *Freedom of Writing and of the Press Ordinance* of 1766, legal historian Professor Rolf Nygren, has published on the history of the *Ordinance* without mentioning the names of Chydenius and Forsskål at all (Nygren 1999). Nygren's point in his article entitled *The Citizen's Access to Official Records – a Significant Principle in Swedish Constitutional Life since 1766* comes close to the arguments made by Klinge and Nordenstreng. The point that Klinge and Nordenstreng make about the history of freedom of the press being the result of inner political struggles within the Swedish realm was earlier emphasized by Nygren. According to him, the 'Freedom of the Press Act' was a result of political struggles:

But it is also as important to conclude that neither the Freedom of the Press Act nor the Public Access Principle were results of a profound legal philosophising. They were the immediate results of a profoundly felt need among the Caps to clear the political stage after the defeat of the corrupt Hats. (Nygren 1999, 22)

In essence, Nygren, Klinge and Nordenstreng all argue that when the so-called Cap Party gained a majority in the Swedish *Riksdag* in 1765, its intention was not to follow some universal principle to give Swedish citizens access to the documents of the Diet. Rather, it was interested in revealing the corrupt nature of the previous elite in power, namely, that of the Hat Party. The goal was to incriminate and to ridicule the Hats.

Nygren also makes a similar appraisal of the role of political thought in the making of the *Ordinance* of 1766. According to Nygren, the *Ordinance* was not underpinned by profound theoretical thinking:

The Public Access Principle was an accidental happening, though the most efficient means to keep politicians and bureaucrats within the boundaries of the law, not the outflow of something deeply rooted in the Swedish constitutional tradition or the fruit of profound theoretical thinking. (Nygren 1999, 28)

Nygren sees the *Freedom of the Press Act* and the *Public Access Principle* as accidents that were born “by mere chance in a political context of a particular character, which means that we can remove all kinds of metaphysical clothing from what happened in 1765-1766” (Nygren 1999, 28).

The aspect of the views of Nygren and to some extent also of Klinge and Nordenstreng, that I find most problematic is that they consider the history of ideas or political philosophizing to be detached from real life. In their view, philosophical ideas are seen as some kind of ‘Lovejoyan unit-ideas’ that are outside time and space (Lovejoy 1948).⁴ But the assumption that the history of ideas, intellectual history or the history of political thought is juxtaposed to ‘real political life’ or to ‘real political struggles’ is based on out-dated views of the practice and methods of the history of ideas, intellectual history and the history of political thought, in particular (see Whatmore 2016). One of the main innovations in the field of the history of political thought during the past forty years has been to emphasize that “political life itself sets the main problems for the political theorist, causing a certain range of issues to appear problematic, and a corresponding range of questions to become a leading subject of the debate” (Skinner 1978, xi). In this line of interpretation, thinkers such as Forsskål can be perceived as ‘theory politicians’ who participate in political debates with their writings (Palonen 2005).

Forsskål's *Thoughts on Civil Liberty* as a political pamphlet

Forsskål's *Thoughts on Civil Liberty* was an intervention in the struggle between the Hats and the Caps. He was concerned that Sweden was about to become an oligarchic aristocracy in the hands of the ruling Hat Party (Nokkala 2012, Nokkala 2016). In a defence of his pamphlet, Forsskål explicitly wrote that Sweden was on its way to “degenerate into a harmful aristocracy” [degenerera till en skadelig aristocratie] (see Annerstedt 1912, 123). Once Forsskål was denied the possibility to defend his *Thoughts on Civil Liberty* as a thesis at Uppsala University, he decided to publish it himself at his own expense and in Swedish. He must have been aware that publishing his thesis in Swedish would politicize his actions. *Thoughts on Civil Liberty* was published on 23 November 1759. The printer of Forsskål's pamphlet was printer and political economic writer Lars Salvius (1706-1773). Salvius was known for his extensive library of Swedish and foreign literature, which was also frequented by Anders Chydenius. Right after publication of the pamphlet, the *Kanslikollegium*, the entity responsible for censorship, ordered *Thoughts on Civil Liberty* to be confiscated. Out of the 500 printed copies, 79 were confiscated. Ironically, it was Forsskål's mentor Carl von Linné (1707-1778), Rector of Uppsala University, who had to carry out the confiscation order. At first the officials did not bother to formally ban the pamphlet. They hoped that the pamphlet would fall into oblivion. An official proclamation was published only after rumours reporting wide circulation of the pamphlet had reached the *Council of the Realm* on 28 February 1760 (Spangenberg 2009, Nordin 2013).

The main point of Forsskål's pamphlet was to argue that freedom of the press and tyranny – be it the tyranny of the parties or tyranny of a single ruler – would not tolerate each other:

So, the life and strength of civil liberty consist in *limited Government and unlimited freedom of the written word*; as long as serious punishment follows all writing which is indisputably indecent, contains blasphemy against God, insults private individuals and incites apparent vices. (Forsskål 2009 [1759], §7, 15-16)

The Age of Liberty 1719/1721–1772

The Hats and the Caps

Swedish political writers coined the term 'Age of Liberty' in the 1750s, emphasizing that the Swedish constitution prevented the misuse of royal power in a regular manner. During the *Age of Liberty*, the four estates – nobility, clergy, burgers and peasants – held the power in the Diet (Riksdag), which was practically independent of the king. The estates of the realm met during a triennial *Riksdagar*. The 1750s and 1760s were characterized by the fierce rivalry of two competing parties in Sweden. The Francophile Hat Party advocated the political and economic interest of the highest noble civil servants. The Cap Party had close contacts with Russia and England. The clergy and the peasants were overrepresented among the Caps. In the 1760s, radicalized Caps began challenging the Hat rule and the established economic, political and social order in a more comprehensive manner. The Cap Party gained the majority in the Diet in 1765. *The Freedom of Writing and of the Press Ordinance* followed a year later.

In Forsskål's view, Sweden had managed to liberate itself from the yoke of a single ruler. However, there still existed the threat of subjects oppressing other subjects. The only countermeasure against the threat of oligarchy was to make the aims of the ruling elite known to the public:

But, when *some subjects are oppressed by the other subjects*, everyone notices that unfairness; and when several misuse their power all at once, the larger crowd more easily overcomes their disparate aims and powers. Therefore, the reverence of the public and their own power do not grant them security enough. 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. (Forsskål 2009 [1759], §6, 15)

This passage can be read as Forsskål's comment on the prevailing situation in Sweden. The Hat Party was in a position to pull the strings of society and make other subjects dependent. Forsskål clearly sees how freedom of the press can function as a tool to check the power of the most powerful in the realm – to reveal the injustice they exercise. In addition, he sees the contributory function of freedom of the press:

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 2009 [1759], §21, 22)

It is noteworthy that Forsskål uses the concept right [*rätt*] – and not duty – in relation to everyone's role in contributing to society's well-being. Furthermore, the quotation above reveals that Forsskål's *Thoughts* was part and parcel of a major change in Swedish political culture in the 1750s and 1760s, which culminated in the *Freedom of Writing and of the Press Ordinance*. Until the *Ordinance* took force, everything that was not explicitly made public was to be kept secret. The *Ordinance* reversed the

order of things completely and made secrecy an exception (Nygren 1999, 21). Although Forsskål's paragraph does not go into further details, it is clear that he was foreshadowing the turn from a political culture dominated by secrecy to a political culture where publicity gained the upper hand. Forsskål argued that it must be possible for society's state of affairs to become known to everyone, with some exceptions. Access to documents and information was the main priority, and freedom of the press was a tool to realize such access. This was also how the *Ordinance* was structured; it contained the exceptions, which were to remain secret. Many of the key elements of the main principles of the *Freedom of Writing and of the Ordinance* were present already in Forsskål's pamphlet.

The impact of the pamphlet

The fact that many of the principles of the *Ordinance* of 1766 were present in Forsskål's pamphlet does not necessarily mean that Forsskål's pamphlet had any impact on the actual substance of the *Ordinance*. One can only imagine how many 'intellectual origins' the First Amendment to the United States Constitution has had. It has even been suggested in a newspaper article that Chydenius' views inspired the *First Amendment* (Petäjä 2016), however fanciful that claim may be. Does this also apply to the relationship between Forsskål's *Thoughts on Civil Liberty* and the *Ordinance* of 1766, or did Forsskål's pamphlet actually have an impact?

Forsskål's and Chydenius' roles in the promulgation of the *Freedom of Writing and of the Press Ordinance* differ significantly. Chydenius was an active and rhetorically skilful member of the committee that was preparing the *Ordinance* at the *Riksdagar* 1765-1766. One of the three proposals for the *Ordinance* most likely came from Chydenius' hand, although in the end it was signed by Anders Kraftman (1711-1791). In any case, the rhetorically skilful Chydenius played a key role in pushing the law through (Skuncke 2016, 132-133, Carlsson 2016, 10). Forsskål had already died while a member of the Royal Danish Expedition to Arabia in 1763 (Baack 2014). Forsskål most likely had some impact, via his personal networks, on discussions concerning freedom of the press prior to his departure. He is known to have had close personal contacts with the Cap Party leadership. In September 1760, Forsskål visited and spent one

night at the home of the leading member of the Cap Party, Bishop Jacob Serenius (1700-1776). Because the meeting took place relatively soon after the publication of *Thoughts on Civil Liberty* and during a time when freedom of the press was highly topical and important to both Forsskål and Serenius, it would be surprising if Forsskål and Serenius had not discussed the topic. Serenius was later to become one of the few people to comment on Chydenius' proposal. Chydenius' original plan was to have the proposal signed by Serenius. It could be that Chydenius thought it would be wisest to submit the proposal in the name of an elderly statesman. On the other hand, the proposal might have been informed and formed by a larger group of Caps than Chydenius leads us to believe in his *Autobiography* (1780), and therefore it might have been more of a collective effort.

Forsskål's impact on the *Ordinance* could have occurred indirectly, through his writings. Olof Kiörning (1704-1778), *superintendent* in Härnösand and member of the clergy estate, reported to the Diet on 9 March 1761 that he had received a copy of *Thoughts on Civil Liberty* via post from an anonymous sender immediately after its publication (Burius 1984, 377, footnote 24). Forsskål's pamphlet could have had an impact during the *Riksdagar* 1760-62, when the freedom of the press was already being fiercely debated and also during the *Riksdagar* 1765-66, which finalized the legislative process. The most radical aspect of the *Ordinance*, access to information, was a central topic already during the *Riksdagar* 1760-62 (Nygren 1999, 20; Skuncke 2016, 115-6, 133).

It is not an easy task to assess the overall impact Forsskål's pamphlet had on the Diets of 1760-1762 and 1765-1766. In any case, his pamphlet was highly topical and touched on the most debated issues. However, almost no one mentioned Forsskål's pamphlet between its publication in 1759 and passing of the *Ordinance* in 1766. Two possible explanations for the silence around Forsskål and his pamphlet come to mind. One is that the ruling Hat Party managed to dampen the reception of Forsskål's pamphlet. After all, the pamphlet questioned the economic and political orthodoxy of the Hat Party and set the Hat party's interpretation of the Swedish Constitution in an unfavourable light. Another, and to my mind more plausible, explanation is that, owing to the enormous fine that would follow from breaking the ban on *Thoughts on Civil Liberty*, no one

dared to mention Forsskål's pamphlet even if it was widely read. The fine was 1000 dalers in silver coin (*taler silvermynt*), which corresponded to nearly two years of salary for a sea captain. If one obstructed extinguishing a fire or denied use of one's well in the event of a fire, the fine was ten dalers in silver coin (Nordin 2015a). It is possible that Chydenius does not mention Forsskål for this very reason. Moreover, the previously mentioned fact that Forsskål's pamphlet was officially banned only after rumours of its success had reached the *Council of the Realm* would seem to indicate that it had impact.

Statements from the period following the introduction of the *Freedom of Writing and of the Press Ordinance* support the second explanation, suggesting that Forsskål's pamphlet was indeed widely read (Steinby 1970). Anders Nordencrantz, one of the leading Cap politicians and a seminal eighteenth-century Swedish writer on political and economic topics, stated the following in 1769 – three years after the *Ordinance* had been introduced:

It is well-known that the disputation was banned with a penalty of 1000 *taler silvermynt*. Still it was to be found in many places and it was read with a much greater interest than if it had never been forbidden and at last completely disappeared. (Nordencrantz 1769, 65; my translation)

Nordencrantz's account gives credibility to Forsskål's own assessment of his success as an advocate of freedom of the press. Forsskål reports the course of events in a letter to his Göttingen mentor, biblical scholar and orientalist Johann David Michaelis in January 1761. According to Forsskål, the banning of his pamphlet made it more sought after and read than it ever would have been without the ban. He also noted that the public (*das Publicum*) had defended him. It was the powerful people (*Die Großen*) in Sweden whom he had angered. Forsskål continued that he did not give up. Because he was already in the Danish service, he dared to write a new defence (*eine neue Vertheidigung*) of his pamphlet that made the powerful people even angrier. Forsskål explained to Michaelis that his defence was widely circulated in Sweden because he dared to speak the naked truth. Forsskål attached his *Thoughts* and the defence to his letter and concluded that the ban had honoured him greatly and made

him known in Sweden as a righteous patriot (*ein redlicher Patriote*) (Buhle 1794-96, 490-91).

In terms of the principle of public access to documents, the conflict that Forsskål had with the administration of Uppsala University, and more importantly with the *Kanslikollegium*, is perhaps even more interesting than his pamphlet. He was continuously demanding that the documents of the meetings of the *Kanslikollegium* be disclosed so that he could defend himself. One of the texts that Forsskål wrote as a response to the *Kanslikollegium* is of particular interest. It is the appeal that he dated 23 January 1760. This is the very same defence Forsskål wrote about to Michaelis. It is longer than *Thoughts on Civil Liberty* itself and demonstrates Forsskål's skills as a rhetorician (Printed in Lagus 1877, 61-70). In his defence – that would deserve more scholarly attention and an English translation – Forsskål argued that nothing will make the government look more suspicious than banning his pamphlet and added that if striving for greater freedom, which he considered to be the main aim of his pamphlet, was against the Swedish form of government, as the *Kanslikollegium* seemed to be suggesting, then there was no real freedom in Sweden. In his defence, Forsskål sought to universalize the claims he had made in his *Thoughts on Civil Liberty*. The fight that Forsskål pursued with the *Kanslikollegium* and his defence apparently became known to the public, as he himself lets us know. Also, Nordencrantz reported the conflict and printed Forsskål's defence in his book *Thoughts on Secrets* [*Tänkar om Hemligheter*] in 1769. Swedish historian Claes Annerstedt stated in 1913, in a rather melodramatic manner, that one could not read Forsskål's defence without being moved (Annerstedt 1913, 348). Officials in Sweden were most likely very happy to hear that Forsskål would be leaving the country to join the Royal Danish Expedition to Arabia. Forsskål's exceptional willingness to fight with the officials was at least partly encouraged by the fact that his escape was secured. We cannot know whether he would have been so daring in his dealings with the authorities had he not had the invitation to join the expedition.

Conclusion

The *Freedom of Writing and of the Press Ordinance* was not the single-handed accomplishment of Chydenius or Forsskål. The history of free-

dom of expression is not a history of great men. However, it would be a great injustice to Forsskål not to recognize the fight he pursued for his *Thoughts on Civil Liberty*. If one wishes to fully understand the profound changes that took place in Swedish political culture in the 1750s and 1760s, one needs to take into account the viewpoint of the history of political thought. Political and philosophical considerations of freedom of the press and freedom of information preceded the actual promulgation of the *Ordinance*. Therefore, they cannot be regarded as mere rationalizations or justifications for political actions already taken. It is good to keep in mind that freedom of the press and public access to documents and information were not realized and cannot be maintained without a constant fight to preserve them (Nordin 2015b). Belonging to this fight, to this political life, are also political and philosophical principles that are part of political life itself.

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Notes

- ¹ See also <http://www.painovapaus250.fi/en>
- ² Still by far the best biography of Forsskål is the one by Martinolli (1960).
- ³ www.peterforsskal.info
- ⁴ In fact, in later interpretations Lovejoy has become a mere caricature of a non-contextualizing historian.

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Freedom of Speech, Expression and Information in Sweden

A Legacy from 1766

Johan Hirschfeldt

Abstract

In 1766, Sweden and Finland – at that time and until 1809 a single country – introduced the principles of freedom of the press and of free access to public documents. Both of these concepts were part of the first constitutional law on freedom of the press (*His Majesty's Gracious Ordinance Regarding the Freedom of Writing and of the Press*). The idea of having detailed constitutional legislation on these two freedoms is still in place as part of the Swedish constitution. Two personalities in particular had presented the arguments for greater openness and freedom to publish: A disciple of Carl von Linnaeus, Peter Forsskål, wrote a pamphlet entitled *Thoughts on Civil Liberty*, in 1759. A Finnish clergyman, Anders Chydenius, was also an important person in preparing the act of 1766. Behind this act there was a clear connection with practical party-politics and other matters of general interest to promote the development of society. From the nineteenth century onwards, publishers and the Ombudsman, working in symbiosis, successively brought the principle of free access of public documents into practice. Of importance is the protection of sources, which consists of a unique criminalisation of attempts to deny sources their immunity from liability and their right to anonymity.

Keywords: His Majesty's Gracious Ordinance Regarding the Freedom of Writing and of the Press, Peter Forsskål, Anders Chydenius, free access to public documents, protection of news sources, editorial secrecy

In 1766, 250 years ago, Sweden and Finland – at that time and until 1809 a single country – introduced the principles of freedom of the press and of free access to public documents (offentlighetsprincipen). Both of these concepts were part of the first law on freedom of the press (tryckfrihetsförordningen). This was not, however, any ordinary law –

it was proclaimed to be a constitutional law. The law was in force for only eight years, but the idea of detailed constitutional legislation on freedom of the press and of free access to public documents was reborn in Sweden after a coup d'état in 1809 and is still in place as a part of our constitution, which consists of not one but four constitutional laws.¹ From 1809 onwards, the development in Finland took a different path; see Nordenstreng.

The Freedom of the Press Act in force today is from 1949. It was then modernized and the freedoms were strengthened. This was a consequence of experiences of sharp interferences by the Government against freedom of the press during the World War II period, when Sweden was spared from war and occupation. However, the constitutional status of the legislation was not abolished during wartime. There were provisions on censorship introduced and adopted by Parliament, but they were never applied.

The Freedom of the Press Act has been changed several times since then. It is applicable to all kinds of published printed matter (books, newspapers, magazines, journals and other printed matter). Here we still also find the provisions on free access to public documents, with exceptions in an act on secrecy (the first one earlier, already from 1937, the second from 1980 and the third from 2009).²

A new constitutional law on freedom of expression from 1991 embraces different forms of electronic mass communication (broadcasting, television, films, sound tapes, videotapes) – and also databases on the Internet, provided that the responsible editor is registered.

A third category of freedom of expression concerns ordinary speech and generally also expressions on the Internet and at theatres, demonstrations and art exhibitions. These forms of expression are protected by some short provisions in the Constitutional Instrument of Government (*regeringsformen*) as well as in ordinary laws. In modern society, some of these categories of communication are of course becoming more and more important. Therefore, concerning this third area, it is interesting to make the following observation. In the administration of justice also in this area, the Chancellor of Justice and the Parliamentary Ombudsman act as guardians against abuse by public authorities. In their decisions and in court practice one can observe a certain positive protective

tendency inspired by the two constitutional laws on freedom of the press and of expression.

On the other hand: In this third area of freedom of expression, hate speech and libel are becoming more common and causing serious societal problems. We therefore find strong support for use of more effective measures against such crimes.³

Some introductory provisions from 1766 and 1809 still remain in force almost verbatim, and accordingly there is still a living legacy from 1766 in the present-day constitutional laws of Sweden. In the current chapter the ideas underlying the 1766 Ordinance and its main principles will be shortly introduced. How these principles have later been renewed and still preserved is then presented. Hereafter follows a presentation of the concept of free access to public documents and some other aspects of the legislation that are of special importance to journalistic work. The chapter ends with some concluding remarks.

The 1766 Ordinance

During the seventeenth century and until 1718, Sweden and Finland went through a period of early modernity in which the central government and its administrative procedures were modernized. They became efficient and rule of law based even under autocratic reign. There were already at that time four estates in Parliament: nobility, clergymen, burghers and farmers.

After the death of the warrior king Charles XII in 1718 there was a dramatic change. The period 1718-1772 was even at the time called the age of liberty (*frihetstiden*). This was a period in Swedish and Finnish history with a strong Parliament – with two opposite parties, the Hats and the Caps – and a very weak King. A sort of parliamentarianism started to evolve. But the period was initially characterised by censorship and secret archives. Disclosure of protocols from Parliament was forbidden – not even the King had the right to look at them! But a certain tradition of transparency was also already in place: The local courts and administrative bodies, with the participation of the agricultural population, had long worked in a situation of public openness. In line with this tradition, changes towards increased transparency were introduced

A Swedish Press

The generally accepted starting year for the Swedish press is 1645, but these initial newspapers were produced on order of the State. The editors were anonymous. During the 18th century, the distribution of news was not considered a good thing. It was common for those in power to prevent or hinder the spread of news. In the view of the authorities, news should only be published when they could be fitted into a larger context.

But, *His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press* of 1766 resulted in lively journalistic activity. Thus, a century after the appearance of Sweden's first newspapers, it is possible to speak of a Swedish press. In this context, it means that Sweden had enough newspapers and magazines that the inevitable closing of some of them did not risk recreating the monopoly situation of the pioneer years.

Number of Newly Established Publications per Decade, 1732-69

Period	Stockholm	Provincial	Total
1732-39	15	1	16
1740-49	8	1	9
1750-59	19	4	23
1760-69	51	17	64

The new freedom of the press, however, proved to be short-lived. It ended together with the age of Liberty in 1772 after an existence of only six years. Limitations on freedom of the press left their mark in the form of a reduction in the number of newly established publications.

Number of Newly Established Publications per Decade, 1770-1809

Period	Stockholm	Provincial	Total
1770-79	65	17	82
1780-89	46	16	62
1790-99	32	25	57
1800-09	10	13	23

Then the year 1809 unquestionably represents a turning point in Swedish history, with a new royal dynasty and a new foreign policy. As for the press, 1809 was a red-letter year not only because of the great transformation of Sweden, but also because the regulatory structure concerning what could be reported and discussed was revised and ordained in a new freedom of the press act in line with the Ordinance of 1766. In some sense, this was where modern Sweden began, and the press, as one of the crucial expressions of modernity, would mirror, advance and challenge events.

Source: Gustafsson, Karl Erik & Rydén, Per (2010). *A History of the Press in Sweden*. Göteborg: Nordicom, University of Gothenburg, (Sylwan 20), pp. 33, 47.

during the age of liberty – and in the 1730s, even court documents could be printed and presented to the public by the parties and others.

Certain personalities, inspired directly or indirectly by British and Scottish authors in particular, began discussing and presenting arguments for greater openness and freedom to publish.

A disciple of Carl von Linnæus, Peter Forsskål, wrote a pamphlet entitled *Tankar om borgerliga friheten* or, in English, Thoughts on Civil Liberty, in 1759.⁴ It was first accepted by the censor, but then prohibited. Here is a citation:

Freedom of the written word develops knowledge most highly, removes all harmful statutes, restrains the injustices of all officials, and is the Government's surest defence in a free state. A wise government will rather let the people express their discontent with pens than with other guns.

A Finnish clergyman, a parliamentarian and a young Cap Anders Chydenius was also an important person in preparing the act of 1766. Chydenius was a typical personality from the Enlightenment. He could perhaps be called the Adam Smith of Scandinavia. He wrote articles on science, economy, freedom of religion, etc., and was in favour of free trade. At that time there were strong restrictions on trade and control measures for members of his constituency, being tradesmen and located in the periphery (Österbotten in Finland), compared with their competitors living in the centre of government in or nearby the capital city of Stockholm. Here and on other matters, there were calls for changes in policies and, therefore, the need for an open debate.

So especially for Chydenius and the Caps, it was important to create an opportunity for review and discussion of the policies. One specific aim was to be able to critically and openly deal with the Hats' former government holdings. What was needed was the possibility to access and print the protocols of Parliament and of the Cabinet, etc.

The title of the new Ordinance was *Kongl. Maj:ts Nådige Förordning, Angående Skrif- och Tryck-friheten* or, in English, His Majesty's Gracious Ordinance Regarding the Freedom of Writing and of the Press.⁵ The aim of the Ordinance was formulated in its preamble, which stated:

Having considered the great advantages that flow to the public from a lawful freedom of writing and of the press, and whereas an unrestricted mutual enlightenment in various useful subjects not only promotes the development and dissemination of sciences and useful crafts but also offers greater opportunities to each of Our loyal subjects to gain improved knowledge. /.../

The principles of the freedom of the press in the act will be presented below under the heading: *Five other, still remaining principles from the 1766 Ordinance*. Here, a brief presentation is given of the principle of free access to public documents found in the act.

In § 6 of the act, there is a very detailed enumeration of all of the different kinds of public documents concerned and of the administrative and judicial bodies' obligation to deliver a document to any applicant with the aim of printing it. The documents should be delivered immediately upon request. There were of course certain limitations stipulated due to secrecy, but discretionary application of the provisions was explicitly forbidden. Civil servants were personally responsible for crimes against proper application of the legal provision on public access to documents. Thus, the ordinary courts had judicial control of the system.

Behind the act of 1766, there was a clear connection with practical party-politics and other matters of general interest to promote the development of society rather than with Voltaire's principles of individual freedom of thought.

Freedom of the press as a legal concept had existed since the late 1600s in England. But the idea of regulating it in the Constitution was radically new, as was the principle of free access to print public documents. In this early Swedish-Finnish concept, the principle of – in modern terms – transparency or freedom of information was truly the most important component of the act.

It is remarkable that this legacy from 1766 in these (since 1809) two countries preceded the American and French Declarations of rights. And it is, again, still serving as a foundation for current legislation in the two countries.

Five other, still remaining principles from the 1766 Ordinance

In other respects as well, the Ordinance of 1766 laid the foundation for general and important legal principles for the protection of freedom of the press and, later on, freedom of expression. The following five principles were expressively stated in the act and have been preserved, but also further developed, since then:

1) Censorship was prohibited (although, until 1809, not in the theological field). This ban today also provides protection against actions by the public authorities to raise obstacles to the printing, publication or distribution of publications – printed or in other modern mass media forms.

2) The principle of legality or the rule of law. It was explicitly stated that every utterance that was not expressly prohibited by law should be free to publish.

3) Imposition of restrictions by the King and his governmental administration was not permitted. The decisions were to be taken by independent courts. The constitutional law provided procedural guarantees against a “police-type” or bureaucratic spirit in the case of actions against abuses of freedom of the press.

4) The principle of exclusivity meant that only crimes specified in the act itself could be penalised. The court procedures and administrative matters should also exclusively be regulated in the constitutional law itself. The constitutional laws from 1949 and 1991 still regulate the freedoms with detailed exclusive criminal, procedural and administrative provisions that are constitutional in nature. In the two fundamental laws, there is an exhaustive list of all deeds actionable as press or media freedom crimes. The crimes that can be committed through these forms of utterance must be painstakingly specified in these laws, not only in ordinary criminal law.

5) The chain of responsibility and the right to anonymity. The provision on these matters can be seen as the embryo of the important provision on sole responsibility of the publisher of a periodical that was introduced in the new constitutional law on freedom of the press from 1810 and that remains at the core of the system today – a principle that has also been introduced in the fundamental law on freedom of expression.

Of special importance is the principle that prosecutorial responsibilities are entrusted only to two high-ranking civil servants: the Chancellor of Justice and, from 1809 onwards, the Parliamentary ombudsman. The Parliamentary ombudsman, with his special duty to protect the freedoms of citizens, was concerned with the need to uphold the principle of exclusivity and sole responsibility of the editor. Already in 1856, he stressed the rights of civil servants, especially those of lower rank, to express their views on the civil service and its shortcomings and to discuss these matters in public. To protect this freedom, the Ombudsman made a statement stressing that disciplinary actions and inconveniencing a subordinated civil servant were not to be accepted. And after an action from the Ombudsman, the Supreme Court for the first time, in 1901, accepted this principle:

In a newspaper an article was published about drunkenness during an army manoeuvres. A superior officer interrogated one of the conscripts and asked if he was the author of the article. The officer thereafter disciplined the conscript for the publication. The Parliamentary Ombudsman went to disciplinary action against the officer. The Supreme Court ruled in line with the action of the Ombudsman and disciplined the officer.

However, after a couple of years came a decline, followed by renewal

Press freedom was gradually curtailed during the Gustavian period (1772-1809). The period started with King Gustaf III, who recaptured power. During his reign, freedom of the press and free access to public documents were “deconstitutionalised” and circumscribed. However later, in March 1809, a coup d’état took place. King Gustaf IV Adolf was forced to leave the throne and go into exile. A second window of opportunity opened up. Freedom of the press and the principle of free access to public documents were immediately reinstalled in a new Constitution already in June 1809. This was a critical period for the country. Russia occupied Finland and was attacking the Swedish coastlands.

What would have happened if the founding fathers had waited half a year or until 1812? Unrest soon started in the country with the Crown

Prince Carl August's death and the rumours that he had been murdered. Then followed the lynching murder of the Marshal of the Realm, Axel von Fersen. Thereafter, in late 1810, there was the election of a new heir to the throne: the French Marshal Jean Baptiste Bernadotte. A new Swedish foreign policy emerged in which Russia was no longer the enemy. Pamphlets and articles flourished markedly during these years, and they could be very disturbing for the Government.

We will never know how these changes would have influenced the legislation if the reform had been delayed, but there is good reason to assume that the concepts found in this part of our constitutional legislation would not be the same as they are even today.

The new constitution of 1809 stipulated that there should exist a specific constitutional law on freedom of the press (85 §) and formulated the freedom of the press in the following manner (86 §):

The freedom of the press is understood to mean the right of every Swedish citizen to publish written matter without any of the public power pre-laid obstacles and not to be prosecuted thereafter on grounds of its content other than before a lawful court or punished therefore other than because the content contravenes an express provision of law, enacted to preserve public order without suppressing information to the public.

Then followed in the same paragraph a specific provision on the right of citizens to print public documents. The detailed provisions on freedom of the press and free access to public documents and the exceptions due to secrecy were stipulated in a specific constitutional law, the Freedom of the Press Act of 1810.

The wording of the cited 86 § has almost been left in its entirety in the still applicable Freedom of the Press Act and in the Act on freedom of expression. In September 2016, the Media Constitutional Law Committee submitted a report *Ändrade mediegrundlagar*, in English *Changed Constitutional Laws on the Media*.⁶ One of the many suggestions to the legislator is to gently rephrase some introductory passages.

The founding fathers who wrote the Freedom of the Press Act of 1810 were mainly concerned with the need to stipulate precise and restrictive limits in the provisions of the renewed freedoms. This was

based on their experiences from the previous period of increasing despotism. The founding fathers ultimately aimed at strong restrictions of the space of discretion for the judge when administering justice. They wanted to limit the powers of the judiciary. In this connection, the new jury system in the courts introduced specifically for freedom of the press cases in 1815 also has played an important role since that time.

The jury has, however, never been an element in litigations on free access to public documents. The judicial procedure on matters of free access to public documents is described in the following section.

Free access to public documents – brief notes on some further developments in Sweden

The possibility to apply for access to public documents was used from the very beginning. If an administrative board, civil servant or a court refused to present an applicant a public document, the applicant could address the Chancellor of Justice. The Chancellor had the authority to prosecute the representative official for the crime of breach of duty. Such actions took place immediately after the 1766 Ordinance. From 1809 onwards, the Parliamentary Ombudsman also has the authority to prosecute. Such actions certainly resulted in increasing the accessibility of public documents for applicants.

In the 1820s and 1830s, a modern regular or daily press began to emerge. Journalists started making demands for access to public documents on a regular basis. The civil service, also at the centre of Government, generally upheld such demands. These matters were routinely dealt with. If they were not, the Parliamentary Ombudsman could take action. One could say that, from the nineteenth century onwards, publishers and the Ombudsman, working in symbiosis, successively brought the principle of free access of public documents into practice. With certain important court decisions on the request by the Ombudsman and the Chancellor, this long-lived instrument has been implemented with force. Already in 1840, the Ombudsman won a case in the Supreme Court where he succeeded in sentencing the president of a national agency whose office had refused to give a journalist access to the agency's journals.

The principle of free access to public information was applicable to documents in central and regional government and in the courts, but not in the sector of local government. Proposals for widening the application have been presented in Parliament from the 1870s onwards. Success came first in 1937.

Until then, all the provisions on secrecy had also been placed in the constitutional law on freedom of the press itself. The number of these provisions had expanded successively due to the expansion of public service in a modernised state, and there was a growing need to modernise the legislation. Therefore it was decided to keep only the main principles in the constitutional freedom of the press law (now in Chap. 2 of the law) and to remove the specific provisions on secrecy, placing them in a new ordinary law: the Secrecy Act. At the same time, an important step was taken towards strengthening the principle of free access to public documents. From 1937 onwards, a refusal for whatever reason from a public body, administrative or within the judiciary, to present a public document to an applicant can be appealed to a court. If the court decides to give access to the document or parts of it, that decision has to be immediately executed. It is not possible for the public body concerned to appeal such a court decision. Refusals of access to documents by the Government in Cabinet cannot, however, be appealed. Here, the standing constitutional committee of Parliament is the supervisor. This is a disputed area of the system, but it should be kept in mind that the Governmental ministries are very small in Sweden in an international comparison. Most of the governmental decision-making, especially concerning individual administrative cases, is performed by separate bodies.

To conclude, a brief presentation of the main provisions on access to public documents is provided below.

The documents kept by a public authority are *official documents* regardless of whether they were received or drawn up at the authority and regardless of their content. An official document may thus be *either public or confidential*. Electronic data registers and other mechanical and electronic records are treated as documents. In the case of documents drawn up by a public authority, the general rule is that they become public when they have taken on their final form. Drafts and proposals also become public if they are filed and registered after a matter has

been settled. The provisions allow some scope for unofficial exchanges concerning internal matters. An official document is public in principle, that is, it must be kept available normally in its original form, for anyone who wishes to examine it. The private subject is entitled to, on very short notice, receive a transcript or copy of the document and may also reproduce or copy it using his/her own equipment. Exceptions from the principle of the public nature of documents or cases when an official document must be kept secret have to be scrupulously identified in a special law, by which is meant the Official Secrets Act from 2009. But the constitutional Freedom of the Press Act lists the relevant interests governing secrecy; there may be no secrecy other than in accordance with these enumerated interests.

Protection of news sources and editorial secrecy

As already mentioned, the two constitutional laws are based on the principle of the sole responsibility of the editor-in-chief. The name of the responsible publisher must be registered, and each separate issue of a periodical or a programme in modern media must carry his or her name. The editor-in-chief is responsible and liable for any offence committed. Others – journalists, technical staff, outside contributors and news sources – are absolved of legal responsibility. This radical principle has been in force in Sweden for more than 200 years. It could be and has been questioned. Is it fully compatible with modern legal thinking and international principles on criminal law? There are, however, no forces in our society arguing for a weakening of the principle of sole editorial responsibility for the editor working with mass media.

The objective of protecting news sources is to secure an ample supply of information to news media and agencies. According to a much-quoted statement, the principles of law mentioned here constitute: “the safety valve which alone makes it possible in many a case for words to be spoken that ought to be spoken, for facts to be disclosed that ought to be disclosed”. This is said to be one of the bases for the free formation of public opinion upon which the Swedish democracy rests.

The principle of exclusive responsibility enables the protection of news sources. This protection consists of provisions granting exemp-

tion from punishment and damages – sometimes called “the freedom of informants” – for those who supply newspaper offices or news agencies with information. It also includes the right for authors and other contributors to printed statements to remain anonymous.

The freedom of informants means that even information privileged in terms of the Official Secrets Act may, to a considerable extent, be passed on to news enterprises for publication. Certain exceptions have been made from the freedom of informants principle. The constitutional laws authorise punishments to be imposed according to statutory law if a person passes on information constituting any of a number of specified crimes against national security. The same applies to offences committed with intent against the law prohibiting delivery of secret documents, i.e., of the actual, physical documentation – but not of the information as such, as well as certain limited violations of legally imposed secrecy.

The right of anonymity under the two laws mainly means that authors and informants are not obliged to appear under their own names in a publication; that it is not permissible to enquire about the identity of the author or informant behind a statement in a publication in connection with cases involving crimes under the two constitutional laws; that those who, while serving with news agencies or other mass-media enterprises in a professional capacity, learn about the identity of the author or informant are bound not to divulge that identity; and that public agencies and their officials are prohibited from enquiring into the identity of the author or informant. These rights and responsibilities are protected in specific criminal provisions in the two constitutional laws.

According to the above-mentioned principles, journalists and other authors of the distributed press material etc. cannot as a rule be sentenced for what they have procured or produced, and the same applies to those who give oral or written information to the media with the aim of publishing it. If there is an intention to publish, it does not matter whether there was no publication in the end. Protection of the informer is still upheld. So, the wells of news are strictly protected and those who provide information have the right to be anonymous. The criminal responsibility rests on the editor-in-chief.

Normally, even a civil servant with that intent can release information to the press about his service, even if the information is secret. Only

in certain cases specified in a fixed chapter of the Secrecy Act can civil servants taking such actions be prosecuted and punished. Thus, the quite limited area in which legally imposed secrecy takes priority over the freedom of informants is specified.

These far-reaching protective provisions have long had a strong effect on the principle of freedom of information. They are upheld today in the on-going reforms of the legislation and in the administration of justice. However, there are of course problems related to balancing this interest with other vital well-founded interests.

The civil servant has – with certain exceptions – his or her constitutional right to give information to the media about conditions and facts relating to superiors or the agency as such or about cases and persons dealt with by the agency. The ideology behind this extensive freedom is that this is the best way to protect democracy and the rule of law in critical situations. But there are of course also certain risks that such a right may be misused. It is of great importance that the media keep their critical independence and also try to use other sources to confirm or reject such information. Here, the Swedish system of independent self-regulation within the media is of importance. This system has been in place since 1916.⁷

This freedom of information is the right of all citizens, whether they are civil servants or not. However, it is not a freedom for the public agency as such. And here we have another problem.

If a ministry, a state board or a municipal agency in its own capacity decides to inform the media in an official statement, a press release or with an official spokesman informing at a press conference, the principle of freedom of information is not applicable. Instead another constitutional principle, namely that of objectivity and impartiality, must be upheld within the civil service. It may therefore be difficult to draw the line between an official statement and protected information. When is the director-general representing his board and when is he using his rights as a citizen? For the prosecutor in freedom of information matters, the Chancellor of Justice or the Parliamentary Ombudsman, it is important to act with restraint when such a problem of balance in a case occurs.

Consider the following illustration of a very delicate and precarious problem. A high-ranking official, e.g. a prosecutor investigating a crime

of great public interest, could be tempted to misuse or try to influence the media with his personal “official version”. If the media do not uphold their critical ambitions and their responsible attitude towards slander in such a situation, a dangerous misalliance or symbiosis between the state and the media could be created. The freedom of information principle must not be used in the interests of the state or through misuses by a civil servant on duty. It is a freedom for citizens – including civil servants – in the interest of our society. The Parliamentary Ombudsman and the Chancellor of Justice can take action against such misuse and ultimately prosecute the official in such cases.

Overall, it can be said that the courts, to solve the sensitive problems associated with conflicts of interest, apply the principle of proportionality.

Naturally, this complicated structure of rules protecting the media and at the same time affecting the administration of justice in criminal cases entails several problems in practice and gives space for widely differing opinions. These conflicts of interest are taken very seriously in an open debate in Sweden. They are often discussed in preparatory legislative works, in the judicial doctrine and by media researchers.

In Sweden today, this protection consists of some unique constitutional provisions on immunity from liability of sources and the right to anonymity. These provisions protect, with very strict limitations, against public agencies and officials trying to trace and reveal the identity of a person, for example a civil servant working in the same agency who has communicated information and against different kinds of action or repressive interventions against a person making use of his or her freedom to inform. An official who acts against these protective provisions is guilty of a crime.

Conclusion

The founding fathers faced issues that are still relevant in today’s society. They had to deal with the responsibility and anonymity of publications in print, and now the same questions also apply to blogs online. People were not to annoy Russia, but now it’s about cartoon caricatures of the Prophet Muhammad. Then it was important to protect the social public order and the individuals against abuse. Now we focus on the same mat-

ters, but use the words hate speech and privacy. Then it was a principle of public support for freedom of opinion, and on the other hand the state's need for secrecy. Today it is about the very same issues: the principle of free access to documents whether in print or digital, transparency, freedom of communication, the prohibition of censorship and, on the other hand, the need for secrecy to protect national interests or the privacy of the individual.

During the 1990s and still today the system is expanding. Modern electronic media are now being brought into the constitutional law on freedom of expression on similar terms as the more traditional forms of media. This on-going expansion shows that there is strong and general acceptance for this system in all of the political parties in Parliament and within society as a whole. However it is becoming increasingly complicated to maintain a detailed understanding of the system. Only a few experts master it fully.

The use of new techniques by the general public on platforms such as Facebook, Twitter etc. are – with the exception of registered databases – not protected by the constitutional laws, and hate speech, defamation and insulting language constitute a growing and worrying problem. This is a serious issue, as the system to protect certain rights of the personality is not as developed in detail in Swedish law as it is in several other European countries. But, of course, Art. 8 on the right to private life and family life in the European Convention on Human Rights is also applicable here in Sweden.

Technical development is very rapid, and the strong internationalisation of the modern media is also a complicating factor for legislators and in the administration of justice.

One might ask whether this system is coming to an end. This is not to say that it will be abandoned as a whole, but that it is becoming difficult to develop it any further, and a need to have greater opportunity to apply ordinary legislation instead of constitutional law to these matters will occur.

One of the parliamentary committees that recently presented an inquiry on the two constitutional laws was tasked with analysing whether it would be suitable to reform the laws by bringing them together to a single constitutional law that is neutral to different technical forms of

utterance and to try to move several detailed provisions from the constitutional level to the level of ordinary law.⁸ This committee also addressed the issue of the relevance of EU law in this area. The committee's assessment was that it is vitally important for Sweden to defend its national regulations in the area of freedom of the press and of expression.

It must be stressed here that freedom of the press and of expression contain core constitutional values where the decision-making powers of the Swedish Parliament have not been transferred to the EU. Moreover, the treaties governing EU cooperation may be considered to support a claim by Sweden that the fundamental principles enshrined in the two constitutional laws are part of our national identity, which it is incumbent on the Union to respect. The committee therefore concluded that EU law provided no reason to make far-reaching changes in the protection provided by the Swedish constitution for freedom of the press and of expression.

The concepts from 1766 were brought to life again in 1809. There have certainly been some periods with backlashes, especially in the very early 1800s and during the World War II period. And since then, new problems have arisen, increasingly due to new techniques in a digital world of globalisation. But the concept prevails and is a living legacy in Sweden.⁹

Notes

- ¹ The Constitution of Sweden, The Fundamental Laws and the Riksdag Act, <https://www.riksdagen.se/en/SysSiteAssets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf/>
- ² Public Access to Information and Secrecy Act, Information concerning public access to information and secrecy legislation, Ministry of Justice, 2009 and <http://www.government.se/49b75b/contentassets/2ca7601373824c8395fc1f38516e6e03/public-access-to-information-and-secrecy-act>
- ³ See the report *Integritet och straffskydd* [Integrity and Crime Protection], SOU 2016:7, with a summary in English, p. 33, also available on <http://www.regeringen.se/contentassets/207048837827439b9d1dce919d0dd6f9/integritet-och-straffskydd-sou-20167>
- ⁴ See the version in English Peter Forsskål, *Thoughts on Civil Liberty*, page 27.
- ⁵ *The World's First Freedom of Information Act, Anders Chydenius' legacy today*, Anders Chydenius Saatio – Stiftelse – Publication 2, Kokkola 2006 with the text of the law in English and a new translation in English made 2016 by Ian Giles and Peter Graves, see <http://www.peterforsskal.info>.

- ⁶ Ändrade *mediegrundlagar* (SOU 2016:58) with a summary in English, p. 37, also available on <http://www.regeringen.se/4a9eb8/contentassets/1433c905d7754b5f8c7858df9f13f6b7/andrade-mediegrundlagar---del-1-av-2-sou-201658>
- ⁷ See www.po.se/english.
- ⁸ *En översyn av tryck- och yttrandefriheten* (SOU 2012:55) with a summary in English, p. 33, also available on <http://www.regeringen.se/49bb87/contentassets/30f9be3d87f842cd96231e4c9fc1f3df/en-oversyn-av-tryck--och-yttrandefriheten-volym-1-del-1-sou-201255>
- ⁹ *Fritt ord 250 år – Tryckfrihet och offentlighet i Sverige och Finland – ett levande arv från 1766*, Sveriges riksdag 2016. This book on 250 years of free speech is a huge volume (725 pp.) that is also to be published in Finnish and in English (at least in a digital English version) during 2017. It will be available for downloading on <https://www.riksdagen.se/sv/bestall-och-ladda-ned/informationsmaterial/>

Freedom of Speech in Finland 1766-2016

A Byproduct of Political Struggles

Kaarle Nordenstreng

Abstract

Finland's history of freedom of speech and press is reviewed here from the same famous starting point as in Sweden: 1766. While Finland, at the time part of Sweden, contributed significantly to the world's first press freedom law passed by the Diet of the Kingdom of Sweden, the founding soon thereafter of the first newspapers in Finland was in no way a result of the legal framework, but rather of the prevailing cultural and economic circumstances. Legal and political regulation played a greater role after 1809, when Finland was ceded to the Russian empire. The century of Russian rule was first favourable to the cause of press freedom, as well as to the rise of civil society and nationalism, but after the 1890s, it became detrimental to press freedom, with harsh repression and censorship. Independent since 1917, Finland provides both positive and negative examples of press freedom. Overall, the 250-year history of Finland serves as a textbook case of how freedom of speech is dependent on the political balance of power rather than on formal laws as such.

Keywords: freedom of speech, press history, Finland, Sweden, Russia

This chapter marks both 250 years since the first Freedom of the Press Ordinance of 1766 in the Kingdom of Sweden, which at the time included Finland, and the centenary of Finland's independence being celebrated in 2017. It is based on a reader on past and present issues of freedom of speech in Finland, published in Finnish in 2015.¹ What follows is an outline of the history of the Finnish press, seen in the context of the country's political history. At the same time, this is a story of nation building amidst internal and external struggles. Freedom of speech is understood here as an umbrella concept covering both the constitutional right of individuals to freedom of expression and a political-legal frame-

work for press and other media. This chapter focuses on the latter aspect: the political history of Finland, its media and the relevant legislation.

Finland's history is typically divided into three stages: the period of Swedish rule from about 1150 to 1808, the period of Russian rule 1809–1917, and independence from 1917 onwards – first over six centuries as an eastern province of the Kingdom of Sweden, then a century as a Grand Duchy of Czarist Russia, and finally the past hundred years as an independent republic.² The same division into three serves as a natural framework for reviewing the history of freedom of speech in Finland.

Swedish rule (1766–1809)

King Adolf Fredrik issued *Förordning angående skrif- och tryckfriheten* [His Majesty's Gracious Ordinance relating to Freedom of Writing and of the Press]³ (hereafter the Act) on 2 December 1766, after it had been passed by the *Riksdag* [the Diet] of the Kingdom of Sweden (composed of the estates of nobility, clergy, burghers and farmers). The process in that body is a story in itself, with a significant role having been played by a Finnish representative of the clergy, Anders Chydenius⁴. While the preparation and the Ordinance, referred to below as the Act, have been covered in greater detail elsewhere (Wennberg & Örtenhed 2016, especially its chapter by Marie-Christine Skuncke), suffice it here to make three general points:

First, the Act was unprecedented as it introduced a fundamentally new approach not only to publishing (replacing censorship with freedom), but also to politics (replacing secrecy with transparency). Second, the Act resulted from a complicated struggle between political forces, whereby the conservatives ('Hats') were defeated by the rising liberals ('Caps'). It may be even claimed that the Act was a byproduct of circumstances – a happy coincidence rather than a project in its own right. Third, the ideas involved were not the invention of the *Riksdag* or of politicians such as Chydenius, but they emanated from a wider history of ideas pervading Europe at the time. And here the credit should chiefly be given to Peter Forsskål – another Finn, whose pamphlet *Tänkar om borgerliga friheten* [Thoughts on Civil Liberty] was published as early as 1759.⁵ This manifestation of pioneering liberal thought can be seen as an intellectual forerunner of the Act (see Nokkala's chapter in this volume).

The first newspapers

Five years after the 1766 Act, in 1771, the first newspaper was founded in Finland: *Tidningar Utgifne Af et Sällskap i Åbo* [News Issued by an Association in Åbo] – Åbo, in Finnish *Turku*, was the provincial capital on the south-western coast of Finland. The paper was published in Swedish, the language of administration and the elite, by the Aurora Society of learned men, including Henrik Gabriel Porthan⁶ and Bishop Carl Fredrik Mennander (who later became Archbishop of Uppsala). It contained news, information and literature and was addressed to a narrow elite, while the bulk of the populace remained illiterate with no access to sources other than the Lutheran Church and word-of-mouth information. However, only five years later, in 1776, the first newspaper was established in Finnish: *Suomenkieliset Tieto-Sanommat* [Finnish-language Knowledge Messenger] by the parish priest Anders Lizelius, offering news and educational information for rural people. Its content was very wide-ranging and its Finnish language perfect, but it only survived for one year.⁷

The faltering history of the Finnish press continued in 1782 when *Åbo Tidningar* [Turku News] revived the legacy of its predecessor, with Porthan still at the helm – by now a professor of the Royal Academy of Turku. The paper came out in Swedish once a week, with an emphasis on domestic news and information as well as history and geography. It survived for less than four years, but reappeared in 1789 as *Åbo Nya Tidningar* [Turku New News]. This was issued regularly for only a year and after another interval continued from 1797 as the only newspaper in Finland.

Note that during the first decades of the Finnish press, the 1766 Act was no longer in force; it was repealed in 1772, together with other constitutional laws, by the next King of Sweden, Gustav III, who in 1774 issued the decree *Förnyade förordning och påbud angående skrif- och tryckfriheten* [Revised Ordinance and Act relating to Freedom of Writing and of the Press], which not only curtailed the freedom granted by the original Act, but also deprived the Act of its constitutional status by transferring the power to legislate on press freedom from the *Riksdag* to the King.

Nevertheless, the slow and shaky beginning of the press in Finland was by no means a consequence of a lack of constitutional protection of

press freedom. The legal framework had no significant influence on the founding and operating of these provincial publications; they were the politically innocuous instruments of the elite. Finland was an idyllic eastern part of Sweden with no other real public sphere than the Church and a limited academic elite. Freedom of speech, or its absence, persisted mostly as oral culture in local communities. People in general were illiterate and led their everyday lives without immediate contact with the wider world.

A provincial backwater

A more important factor than the legal status of publishing was the peripheral status of Finland under Swedish rule. As Sweden's eastern province, it had a well-established administration, a strong church and even a university – the Royal Academy of Turku being the third in the kingdom after Uppsala and Tartu, all founded in the 17th century. Still, Finland remained a backwater compared to mainland Sweden and its capital Stockholm, the site of all major events in the kingdom. In Stockholm there was also an influential press, where many Finns preferred to have their material published instead of the fledging papers in Turku. Moreover, the Stockholm papers found their way to Finland and were read not only in Turku, but also in other circles along Finland's western coast, by individual clergy and merchants.

Here we should keep in mind that the press was established in Sweden over a hundred years earlier than in Finland – already in the 17th century, when it typically emerged in other European capitals. The Swedish newspapers were first founded in Stockholm, and it was only during the last three decades of the 18th century that they began to be published in the provinces, beginning with Gothenburg and gradually reaching most provincial centres – including Turku.

Russian rule (1809-1917)

Sweden lost its eastern province to Russia in the war of 1808-09, and Finland was granted the status of an autonomous Grand Duchy of Russia.⁸ Finnish-born generals Gustaf Mauritz Armfelt⁹ and Georg Magnus Sprengtporten¹⁰, along with a growing number of the Finnish

military and cultural elite, were disillusioned with Sweden's role in the Napoleonic wars and are alleged to have defined the historical place of Finland in 1809: "We are no longer Swedes, we don't want to become Russians, so let's be Finns."

In March 1809, Czar Alexander I met the representatives of the Finnish estates in Porvoo – a small coastal town symbolically halfway between St. Petersburg and Turku – and promised that Finland could retain her laws and religion as they had been under Swedish rule. Accordingly, Finland was not totally annexed to another empire; she was even allowed her own Diet of four estates and her own of government, called the Senate, but still under the Czar and his Governor General. The currency was changed from the Swedish crown to the Russian ruble – a move that had practical consequences for the entire population. A more symbolic move was that Turku was promoted from a provincial centre to the capital city of an autonomous Grand Duchy.

More newspapers

Due to this move, Finland's only newspaper *Åbo Tidning* became the official paper of the country, now called *Åbo Allmänna Tidning* [Turku General News]. More papers were founded in Turku, inspired not only by the country's new status, but also by an awakening of nationalism and romanticism among the elites. Attention turned to folklore, national identity and Finnish as the grassroots language – all duly reflected in the press. However, the discourse and the papers continued to be mainly in Swedish and circulated only among limited cultivated circles.

While Turku, its Academy and the Finnish press were gaining momentum, the political atmosphere in Russia regressed after the defeat of Napoleon and the 1815 Congress of Vienna, followed by the "Holy Alliance" of Orthodox Russia, Catholic Austria and Protestant Prussia – all of them wary of liberal and revolutionary movements. Russia began to apply its censorship act of 1804, especially after Alexander I was succeeded by Nicholas I in 1825, and there were also reverberations in Finland. Sweden, on the other hand, moved in a liberal direction after a new freedom of speech act in 1809; together with Britain, she was among the freest countries in Europe.

The transfer of the Finnish capital from Turku to Helsinki in the 1810s was a major administrative and political innovation. Helsinki was a small town in the middle of Finland's southern coast. The move was intended to loosen the historical ties with Sweden and to integrate Finland into imperial Russia. Actually, Helsinki grew into an impressive capital with Empire-style architecture. It also initiated its own press, first and foremost a new official paper for the country *Finlands Allmänna Tidning* [Finland's General News]. However, Turku continued to be the stronghold of the Finnish press in the 1820s, when the second Finnish language paper *Turun Wiikko-Sanomat* [Turku Weekly News] was published there. Meanwhile, some newspapers were also published in the principal south-eastern city of Viborg – in German, reflecting the multi-cultural influence of nearby St. Petersburg.¹¹

Helsinki finally became the centre of Finland's intellectual life, including journalism, after 1828, with the transfer from Turku of the university, now called the Imperial Alexander University in Finland. Politically, the shift from Turku to Helsinki meant not only a severing of the old ties to Sweden and the formation of new ones to Russia, but also the construction of a Finnish national identity. Czarist Russia even encouraged such local awareness and civil society through economic policies, notably by helping merchants in St. Petersburg – beginning with the Scotsman Finlayson – to establish factories in Tampere, Finland's main inland town (founded in 1775 by the Swedish King Gustav III).

Thus a growing sense of nationhood was an inevitable, yet unintended consequence of the political move from Sweden to Russia, while economic integration with Russia gave rise to the gradual industrialisation of a hitherto completely agrarian country. Compared to the six hundred years of Swedish rule, the century of Russian rule witnessed unprecedented development, both materially and psychologically.

Institutionalisation of censorship

Paradoxically, all this happened under increasing political pressure from the Czarist regime. A sign of the tightening grip during the regime of Czar Nicholas I was the Censorship Decree of 1829, setting up a centralised system for the advance control of both the press and works of science

and art in Finland. The topics particularly covered by censorship were Czarism, religion, public decency and personal honour, but the Decree was fairly vague, leaving ample room for interpretation at the discretion of the Supreme Censorship Agency. In fact, for years the Decree served more as a potential threat than as a real curb, while the general atmosphere in the country was fairly peaceful and the common people downtrodden, as they had been for centuries.

In this situation, more papers were established with the Senate's permission in the 1830s, and printing shops were also licenced to operate in the provincial towns, producing newspapers, books and commercial leaflets. At this time, Helsinki got several papers (in Swedish), including *Helsingfors Morgonblad* [Helsinki Morning Paper], which followed the same concept as Finland's first newspaper in Turku 60 years earlier: based on a literary circle around the university and mainly run by one influential person, in this case Johan Ludvig Runeberg (later to become Finland's national poet) and his wife Frederika. Its content was predominantly cultural, including translations of German and English literature, but reports from abroad also became frequent. Another new paper, *Helsingfors Tidningar* [Helsinki News], focused more on local news and announcements as well as advertisements serving commerce. Foreign news was mostly concentrated in the official *Finland's Allmänna Tidning*, which covered world events with a very wide scope.

Consequently, the press in Finland – as a many-voiced institution of the public sphere – can be seen to have really come into being during the first decades of Russian rule. Thanks to the press, Finland was fairly well connected to the rest of the world and no longer a backwater on the north-eastern periphery of Europe. At this time, more papers were also launched in Finnish: *Oulun Viikko-Sanomat* [Oulu Weekly News] in the northern-most town of Oulu, and *Sanan Saattaja Wiipurista* [Messenger from Viborg] in the south-eastern mini-metropolis, where one of its German-language papers was replaced by this one in Finnish.

However, the main language of the press in Finland was still Swedish, which was used for administration and culture until the end of the 19th century. Moreover, the public sphere surrounding the press, culture and politics was quite restricted – mainly including city dwellers, who accounted for seven per cent of the population in the middle of the cen-

ture. The potential readers in 1815 were estimated to number no more than about 20,000 – civil servants, clergymen, wealthy merchants and landowners. In the 1830s, just five per cent of rural-dwelling adult males could read and write. Only the Lutheran Church was truly in touch with the majority of the population, maintaining its own peculiar semi-public sphere.

Nationalism on the rise

A new chapter was written in the history of the Finnish freedom of speech in the 1840s through the ideas and activities of Johan Vilhelm Snellman¹², a philosopher who followed the wave of contemporary reformist ideas about society, politics and the press coming from continental Europe and Britain. He combined the Hegelian philosophy of the spirit of a nation with the libertarian understanding of the rights of the individual and free competition. For Snellman, the press was an ideal platform for both representing the national spirit and promoting freedom of thought and expression. This required that the press be an independent institution and that it monitor the state and society in the public interest; in other words, the press was to operate as the “fourth estate”. This also meant that the press was assigned a very important role in society – not only as a passive channel for information, entertainment and commercial objectives, but also as an instrument with which to fight for higher objectives.

For Snellman, the press in its contemporary form was mostly too passive and acquiescent to the political and cultural status quo; he wanted the press to become an eloquent advocate of Finnish nationalism, an ideology based on Finnish culture and language. He became a leading “Fennoman” by founding in 1844 the weekly paper *Saima* – paradoxically in Swedish – in Kuopio, a provincial town in eastern Finland from which he called vociferously for a national awakening until 1846, when the paper was closed down by the Russian Governor General Aleksandr Mensjikov. The grip of censorship tightened, while the Fennoman-led opposition gained strength, with its Finnish-language flagship *Suometar* launched in 1847. In 1850, a decree was issued forbidding the publication in Finnish of anything other than commercial or religious material. The Language Decree was not just a response to rising unrest in Finland, but also part

of a broader strategy on the part of Czar Nicholas I to isolate Russia from the revolutionary movement sweeping across Europe in the late 1840s.

Freedom of speech at issue

The political atmosphere became more open and liberal in 1855, when Alexander II succeeded as Czar, followed by the end of the Crimean War, which had fomented tension throughout Russia, but had also demonstrated the value of news reporting by means of the new telegraph technology. Restrictions on publishing in Finnish were lifted, and in 1866 the Censorship Decree was replaced by the Decree on Press Freedom. This meant a return to the spirit of the 1766 Act, whereby publishing of any materials should be free from prior control and only subject to post-publication scrutiny regarding possible infringements of the law. The new list of forbidden topics was long, but still in accordance with the criminal law, and in any case freedom of speech was proclaimed a human right for the first time in Finland, in line with the ideas of liberalism gaining ground across Europe. However, a peculiar feature of the new Finnish decree was an economic requirement derived from the Russian censorship practices: Every periodical publication was required to deposit a sum of money in the state treasury as a surety against potential subsequent fines due to infringements of the law. The sum was quite high, corresponding to the annual salary of the editor.

The Press Freedom Decree was prepared for debate in the Finnish Diet, which was convened in 1863, after half a century of the estates being overridden by the Czarist administration. Although pursued by advocates such as Snellman – now Senator and Director of the Bank of Finland (since 1865 the guardian of the national currency, the Finnish mark) – the Decree did not assume a form acceptable to both the Diet and the Czar. Therefore it was issued by the Czar alone, yet in accordance with his constitutional powers. The temporary Decree remained in force for less than two years and, no consensus having been reached by the Diet and the ultimate authority, the Czar issued a new Printing Decree in 1867, more or less reverting to the earlier modality with censorship. History seemed to be repeating itself: The liberal legislation was short-lived and was repealed by a ruler with a fairly liberal reputation.

In practice, however, the new printing decree did not drastically change the situation – for the time being. The press and literature were expanding from the 1860s onwards, especially in the Finnish language, following a decree which gave Finnish the same status as that traditionally enjoyed by Swedish. At this stage, the Finnish-language papers already accounted for half of the total press circulation. However, tension persisted between the Czarist authorities and the Finnish press, and the Diet continued to push for press freedom legislation until the 1890s – without success. The 1867 Decree including censorship remained in force until the end of Russian rule, but the reality of press freedom and public debate continued to be fairly favourable until the last decade of the 19th century. Yet the assassination of Czar Alexander II in 1881 was a reminder of the empire's instability, encouraging his successor Alexander III to maintain a firm grip on press freedom and censorship throughout Russia, including Finland, while he was otherwise fairly supportive of Finland's autonomous status.

Progress on all fronts

In general, the 1860-80s was a period of rapid development in Finland, both economically and politically. Finland even established its own army based on conscription, replacing selective compulsory service in the imperial army. Industrialisation surged ahead, giving rise to the emergence of an industrial working class, and politicisation was expedited by the continuing rise of nationalism. Basic education was organised, with municipal schools gradually spreading throughout the country. A lively (Finnish-speaking) civil society sprang up alongside the older (Swedish-speaking) elite, with the press playing a decisive role. The literacy rate was 12 per cent in the 1880s and by 1900 it had reached 40 per cent. By the turn of the century, there were over 70 papers throughout the country, most of them published in Finnish and reaching practically all households.

This was a time when the civil society began to generate political parties and most papers were involved in this process. Accordingly, the press was grouped around the main political orientations: the traditional Swedish-speaking elite, the Finnish nationalist movement divided into

conservative ‘Old Finns’ and radical ‘Young Finns’, and the working-class socialist movement. The flagship of Old Finns was *Suometar* [Newborn], the Young Finns had their *Päivälehti* [Paper of the Day] and socialists their *Työmies* [The Working Man]. The latter was published in Helsinki and, together with emerging labour papers in other industrial towns, its circulation gradually surpassed that of the other political groups. In general, press and politics were inseparable and most of the political parties’ founding fathers were also newspaper editors.

Czarist repression

The politicisation process in Finland was galvanised in the 1890s by a new Czarist policy of repression, beginning with the new Printing Decree of 1891, with ever-stricter controls. Once again, for Czarism it was not just a Finnish issue, but part of a broader strategy to contain the rising discontent in Russia – especially the left-wing movement, which in 1898 was organised as the Russian Social-Democratic Workers’ Party. A landmark blow to Finland was the Manifesto issued by Czar Nicolas II in February 1899, transferring all legislative power to the Czar and reducing the Diet to a talking shop. Followed by a decree disbanding the Finnish army, the February Manifesto started a five-year-long period of Russification in Finland and of crisis with the Czar and his hard-line Governor General Nikolai Bobrikov.

The Repression Period, as these years are known in Finland’s history, was hard for the press. Censorship was harsh and tens of papers were banned, among others *Päivälehti*, which, however, was continued as *Helsingin Sanomat* [News of Helsinki]. Repression of papers included both preventive censorship and post-publication control – involving not only fines, but also dismissal, detention and even deportation of editors. Nevertheless, politics and press survived and were even strengthened. In this struggle, the gap in Finland’s internal politics widened between the anti-Russian constitutional ‘radicals’ and the ‘realists’, who preferred a policy of appeasement under Czarist pressure so as to safeguard Finland’s fundamental autonomy.

Breakthrough in the political struggle

The Repression Period ended after Bobrikov was assassinated by a Finnish activist in 1904 and after Russia herself was drawn into a crisis due to the lost war with Japan (1904-05), followed by a general strike in October 1905. This was a 'quasi-revolution', whereby imperial Czarism yielded and transformed itself into a constitutional monarchy with a greater legislative role assigned to the *Duma*. The general strike spread to Finland, where its core was among the working class, calling for the restoration of civil rights and freedoms and for a constitutional reform. The first manifesto of the Finnish demands was a declaration during the general strike in Tampere on 1 November 1905, calling for the abolition of all forms of repression, the formation of an interim government, the convening of a people's assembly and universal suffrage to be established.¹³

Here, too, the Czar was forced to yield: The strike ended in November with the Czar's declaration revoking censorship, authorising the preparation of a constitutional Act to guarantee basic political rights and promising to implement a parliamentary reform.

Immediately after the general strike, the Senate set about preparing legislation with the same constitutional status as the 1766 Act to safeguard freedom of expression, assembly and association. The constitutional Act to this effect was passed in August 1906. Its first article reads as follows:

A citizen of Finland shall enjoy freedom of speech and the right to print written and visual matter, which right shall not be denied in advance.

A separate law on freedom to print was intended to elaborate this, and also the other articles on freedom of assembly and freedom of association. However, the Senate failed to pass a law acceptable to the Czar, and the freedom of speech legislation remained somewhat open to interpretation until the end of Russian rule.

Nevertheless, a parliamentary reform was speedily implemented: The last session of the four-chamber Diet approved a new constitutional order in June 1906 and the Czar confirmed it a month later, replacing the old Diet with a one-chamber Parliament to be elected through universal

suffrage. After workers, landless people and women got the right to vote, the size of the electorate grew tenfold. The first election of the world's most modern Parliament was held in March 1907 – with a free press as a vital part of the electoral process.

Czarism's last stand

This breakthrough of democracy lasted only a little over a year until a new Repression Period began in the middle of 1908: The powers of the new Parliament and old Senate were drastically reduced in the Grand Duchy of Finland – formally still autonomous but in reality taken over by the Czarist administration. The second Repression Period lasted until 1917, when Czarism was abolished by the February Revolution and the October Revolution led to the end of imperial Russia. While Russia was weakened by mounting internal unrest at the turn of the century and after 1914 by World War I, the Czarist repression in Finland remained unrelenting, trying to hang on to control over politics and press with a comprehensive policy of Russification. Yet, as in the first Repression Period, it only served to strengthen resistance, the sense of nationhood and the politicisation of Finnish society. And again, press was a vital part of this process.

Finnish rule (1917-2016)

Finland became independent in 1917, *de facto* in November and *de jure* in December.¹⁴ For 108 years, Russia had been the scene of Finland's evolution into a nation with its own economy, political system and a press upholding a growing sense of national identity – through both the supportive and repressive measures of Czarism. Although the country was ripe for independence, it would hardly have materialised without the Bolshevik Revolution – and Lenin's personal support.

Upon independence, Finland had over a hundred newspapers more or less following the party political lines already established at the turn of the century, now with the agrarian movement gaining ground in the provinces. In addition, there were many other periodicals, and book publishing had been well established since the last decades of Russian rule.

Moreover, moving pictures had entered Finland in the first decade of the 20th century as elementary film productions and cinema theatres also showing foreign films. Even radio arrived early in Finland, first through wireless telegraphy used already in 1900 for communication with a Russian battleship that ran aground in the Gulf of Finland.¹⁵

Constitutional freedom regained

A new Constitution was prepared in 1917 and formally adopted in 1919. It included the same Article on freedom of expression, assembly and association as already passed in the Act of 1906, retaining the wording quoted above. A separate Freedom of the Press Act, as required by the Constitution, followed in 1919. It specified the banning of censorship and stipulated the freedom to print without prior permission as well as the right to disseminate printed matter. It also determined how to identify those responsible for publishing, as all printed material was subject to criminal and other laws after publication. The 1919 Act focused on the press, leaving broadcasting and moving pictures to be regulated separately. However, its spirit was extended to other emerging media and hence the production of moving pictures was free, while their distribution was placed under a specific censorship board.

Accordingly, the 1766 Act of the Kingdom of Sweden was confirmed by the highest legal instance in independent Finland over 150 years later. However, one element of the original Act was lost over the course of history: free access to public documents and in general the people's right to know. This was implicitly included in the idea of press freedom, but there was no specific constitutional clause guaranteeing it. The administrative culture in Finland, inherited from Swedish rule and strengthened during Russian rule, supported the authorities – notwithstanding the opposition to Czarist oppression – and did not fundamentally challenge a secretive administration.

A guiding principle of the 1919 Freedom of the Press Act was to prevent the government from interfering in the press and other forms of publishing. Yet there were extensive provisions for the authorities to limit publications under exceptional conditions, notably in time of war. Actually these provisions were already invoked in 1918 after the bloody

Civil War into which the country descended immediately after gaining independence.¹⁶

Democracy curtailed

The 'reds' being defeated by the 'whites' in the Civil War led to a situation in which nearly half of the members of Parliament elected on the eve of independence in 1917 were absent – the socialist members who had either defected to Russia, where they founded the Communist Party, or were arrested for treason and put behind bars. The press of the political left was also largely disbanded and outlawed; the previously flourishing working-class press was reduced to a few organs of the divided movement. Although in 1919, in the first elections after independence, the socialists were voted back into Parliament as the largest political group, the extreme left and its press were excluded from political life, and Finland continued to be an imperfect democracy until after World War II.

In the first two decades after independence, the politics and the press in Finland drifted to the right, yet within the legal framework of a constitutional republic. Radio entered this arena after private radio amateurs started public transmissions in Turku and Tampere in the early 1920s and the national broadcasting company (YLE) was founded in 1926.¹⁷ YLE operated under a charter granted by the government and closely followed the prevailing right-wing orientation in the country, with its anti-communist and anti-Soviet policies.

By the end of the 1930s, radio had reached practically the whole population and, together with the press, constituted technically a firm media infrastructure for shaping public opinion. At this time, there were over 120 newspapers with a total circulation of one million – the same as the number of households in the country. Half of the papers were affiliated with various bourgeois parties, 10 per cent with socialist parties (excluding the illegal Communists), while the rest were independent commercial papers. In addition to politically oriented newspapers and radio, starting in the 1920s an expanding branch of popular culture was introduced through magazines, books, films and records.

In late 1939, Finland was drawn into the "Winter War" against the Soviet Union.¹⁸ This lasted for three months, after which Finland retained

her independence, but lost 11 per cent of her territory in the province of Karelia bordering the Soviet Union, and its population of over 400,000 Finns – mainly farmers – was quickly resettled all around Finland.¹⁹ During the war, censorship was in force, but despite intensive propaganda, the news, especially in the press, remained fairly informative. The peace treaty signed in Moscow in March 1940 required that Finland renounce anti-Soviet policies on all fronts, including the media. However, a U-turn during an interim peace had not been fully implemented until hostilities, known as the “Continuation War”, were resumed: In mid-1941, Finland became embroiled in World War II, again fighting against the Soviet Union – now as an ally of Nazi Germany.²⁰

The Continuation War lasted for three years, again with censorship in force, and resulted – after the fall of Germany – in the same outcome as the Winter War, except for further loss of territory (the north-eastern strip of Petsamo) and three times as many soldiers killed (1939-45 altogether 90,000) as well as considerable war reparations. The war ended with the signing of the peace treaty in Moscow in September 1944, and Finland’s situation was finally determined in the Paris Peace Treaties of 1947 between the Allied powers (USSR, USA, UK and France) – which came victorious out of World War II – and the Axis powers (Italy, Romania, Bulgaria, Hungary and Finland) – which had sided with Nazi Germany.²¹

Democracy restored – within limits

Soon after the war ended, parliamentary elections were held in March 1945. Surprisingly, half of the seats went to the socialist parties: 25 per cent to the moderate Social Democrats and 25 per cent to the left-wing socialists, including the Communists, who now entered politics for the first time since the Civil War. The political power suddenly shifted from the right to the left, as seen in the appointment of a new Director General for YLE – a left-wing socialist just released from prison.²² Political life, including debate in the media, was quite lively and democracy duly restored.

However, the associations and publications of the extreme right – a homemade fascist movement – were banned by the Moscow peace treaty.

Likewise, the national guard, established throughout the country by the 'white' side after the Civil War, were banned and their numerous papers discontinued. Moreover, thousands of books were removed from the shelves of public libraries because they were considered to be war propaganda hostile to the Soviet Union. A similar line was also adopted in the control of film distribution.

The implementation of these limitations was monitored by a Control Commission of the Allied Powers – in practice represented by the Soviet military. Although all went in accordance with the law of the country and wartime censorship was lifted, there was a rising fear of too much interference in Finnish life – including unfair Soviet support for the Communists. Yet little political space was left for an organised opposition to the Soviets, because the terms of reference were determined by the winner of the war. The new policy towards Finland's mighty eastern neighbour was sealed with the Agreement of Friendship, Co-operation and Mutual Assistance between Finland and the Soviet Union, adopted by Parliament in 1948.²³

On this basis, Finland adopted a policy of neutrality in international relations, holding itself aloof from military alliances and trying to build bridges in the Cold War between East and West.²⁴ This led to a certain reticence in political behaviour and media coverage regarding the Soviet Union and its allies in Central-Eastern Europe, dubbed "Finlandisation" by its detractors. However, this policy was not stipulated by law, but instead maintained by a widely supported consensus culture and self-regulation in journalism, called by its opponents "self-censorship". Such a soft approach was confirmed by Finland's entry into international organisations (UN, UNESCO, Council of Europe, etc.) and their recommendations.

In general, freedom of speech enjoyed an increasingly favourable environment in post-war Finland, especially after the 1960s. The media landscape was quite abundant and fairly diverse, although the share of politically affiliated newspapers was decreasing and the ownership of non-affiliated press was concentrating.²⁵ The growth of television since the late 1950s afforded yet another outlet for both popular culture and political communication.²⁶ While post-war Finland did not make it easy for its media and culture to promote outspoken Cold War campaigns,

especially against the Soviet Union, the mainstream media and popular culture maintained a pluralistic climate of opinion, with an overwhelming flow of material from the West, not least the US.

After the collapse of the Soviet Union, Finland joined the European Union in 1995. This was a step back from complete non-alignment, but did not radically change the geopolitical position: Like Sweden, Finland did not join NATO. The media landscape in the country also continued to evolve without radical changes, but with an increasing role played by radio, television and the new options afforded by the Internet. Along with the technological and political changes, the legislation on electronic media was updated, retaining the public service YLE as a central actor.

Reverting to 1766

While the media landscape retained its basic structure beyond the turn of the millennium, a gradual change has taken place in how freedom of speech is understood. Ever since the 1960s, the traditional idea of press freedom as mere absence of censorship has been challenged by a broader paradigm whereby freedom of speech is an integral part of democracy and human rights.²⁷ The paradigm shift was caused by a trend of democratisation in society, whereby all groups in the population should have equal access to the media and the media should be accountable to society.

An important source of inspiration for the paradigm shift was the Universal Declaration of Human Rights, with the famous Article 19 stating that the right to freedom of opinion and expression includes the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.²⁸ Hence the right does not only mean freedom to publish, but also to receive and moreover to seek information – the seeking aspect lending support to investigative journalism and to demands for transparency.

This approach is confirmed in Finland’s new Constitution of 2000.²⁹ Its Chapter 2 on “Basic Rights and Liberties” includes Section 12 entitled “Freedom of Expression and Right of Access to Information”. It reiterates the concept of freedom of speech from the original 1919 Constitution – derived from the 1906 Act – and it additionally stipulates: “Everyone has the right of access to public documents and recordings”.

Like the original Constitution, it was followed by a separate Act on the Exercise of Freedom of Expression in Mass Media.³⁰ The right of access to information was elaborated in a particular Act on the Openness of Government Activities.³¹

Thus Finland's current legislation has reverted to the 1766 Act with its guiding principles of free speech and open government. Peter Forsskål is not only a chapter in the history of freedom of speech, but his spirit is also embedded in the current Constitution of his native Finland.

Conclusion

Finland's 250-year history is inseparable from that of Sweden and Russia, and indeed the rest of Europe. For the past two centuries, it has been a journey quite different from that of Sweden – Finland's being a nerve-shattering rollercoaster compared to Sweden's peaceful playground. As a part of imperial Russia, Finland served as a test-bed in the struggle between Czarism and its opponents – for containing liberalism by repression, containment and accommodation. The last century of independent Finland has been a test-bed in the struggle for democracy – in overcoming wars and class divisions.

Finland is a prime example of how the media, as a platform for culture and politics, have gained an ever-greater role in society – not only a vehicle for politics but politics itself. Moreover, the story of Finland shows how different turns in the struggle for freedom of speech have been a byproduct of more general socio-political power struggles rather than particular media developments per se.

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Notes

- ¹ See Nordenstreng 2015. This is a revised and updated edition of *Sananvapaus* [Freedom of Speech], published in 1996 (Helsinki: WSOY). The concluding chapter of the latter appeared in English as Nordenstreng 1997. For the contents of the 2015 reader, see http://www.nordicom.gu.se/sites/default/files/Dokument/Medieforskning/fi_litteratur_2015.pdf
- ² For a brief outline, see <https://finland.fi/life-society/main-outlines-of-finnish-history/>. For books, see e.g. Klinge 1981 and Meinander 2011.
- ³ For the whole Act in English, see <http://www.peterforsskal.info/documents/1766-translation.pdf>
- ⁴ See <http://www.painovapaus250.fi/en/anders-chydenius> and <http://www.painovapaus250.fi/en/press-freedom-250-years>
- ⁵ <http://www.peterforsskal.info/> Actually Forsskål was a Finn only by birth, as he lived most of his short life in Sweden.
- ⁶ <http://375humanistia.helsinki.fi/en/humanists/henrik-gabriel-porthan>
- ⁷ The main source for Finland's press history here and below is, in addition to the 2015 reader (see note 1 above), the first part of the 10-volume *Suomen lehdistön historia* [History of Finland's Press], Tommila, Landgren & Leino-Kaukiainen 1988.
- ⁸ https://en.wikipedia.org/wiki/Grand_Duchy_of_Finland
- ⁹ https://en.wikipedia.org/wiki/Gustaf_Mauritz_Armfelt
- ¹⁰ https://en.wikipedia.org/wiki/Georg_Magnus_Sprengtporten
- ¹¹ Viborg was part of the eastern territory of Finland, which in fact had been annexed to imperial Russia already in 1721 after Sweden lost it to Russia in the "Great Northern War" (1700-21), see https://en.wikipedia.org/wiki/Great_Northern_War. This territory of so-called "Old Finland" later became part of autonomous Finland under Russian rule as the Province of Viborg, which benefitted from the economic and cultural influence of St. Petersburg – one of Europe's most international metropolises, see https://en.wikipedia.org/wiki/Old_Finland
- ¹² https://en.wikipedia.org/wiki/Johan_Vilhelm_Snellman
- ¹³ The working class movement in Finland was in the vanguard of the forces against Czarist oppression, including censorship. After all, censorship in 1904 had prevented the printing of the Finnish translation of *The Communist Manifesto* by Marx and Engels. It is also worth remembering that the Russian Social-Democratic Workers' Party held two clandestine meetings in Tampere in 1905 and 1906, see https://en.wikipedia.org/wiki/Tampere_Lenin_Museum
- ¹⁴ Finland's official Independence Day is 6 December, the day when Parliament issued the Declaration of Independence. However, the acknowledgement from Finland's

formal 'overlord' Russia was received only on 31 December, when the government of the new Communist state confirmed it in a letter signed by Lenin, Stalin, Trotsky and other members of the People's Commissariat. See https://en.wikipedia.org/wiki/Finnish_Declaration_of_Independence

- 15 https://en.wikipedia.org/wiki/Alexander_Stepanovich_Popov
- 16 https://en.wikipedia.org/wiki/Finnish_Civil_War
- 17 <http://www.radioheritage.net/europe/countries-finland.htm>
- 18 https://en.wikipedia.org/wiki/Winter_War
- 19 https://en.wikipedia.org/wiki/Karelian_question
- 20 https://en.wikipedia.org/wiki/Continuation_War
- 21 https://en.wikipedia.org/wiki/Paris_Peace_Treaties,_1947
- 22 https://en.wikipedia.org/wiki/Hella_Wuolijoki
- 23 https://en.wikipedia.org/wiki/Finno-Soviet_Treaty_of_1948
- 24 This policy is inseparable from the longest-serving President of Finland, Urho Kekkonen, see https://en.wikipedia.org/wiki/Urho_Kekkonen He was the initiator of the Conference on Security and Co-operation in Europe, ending with the Helsinki Accords in 1975, see https://en.wikipedia.org/wiki/Helsinki_Accords
- 25 For an overview, see http://ejc.net/media_landscapes/finland
- 26 Finland was the first Nordic country to introduce commercial TV alongside the public service system. In the late 1960s, YLE adopted an extraordinary policy of "informational mass communication"; see Nordenstreng 1973.
- 27 A closer analysis of this paradigm shift is presented in Nordenstreng 1997.
- 28 <http://www.un.org/en/universal-declaration-human-rights/> This unanimous opinion of the international community in 1948 was legally confirmed in 1966 by the International Covenant on Civil and Political Rights, with a more elaborate definition in its Article 19, see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> The European Convention of Human Rights of 1950 is a parallel legal instrument, but its Article 10 on freedom of expression is more limited as it does not include the aspect of seeking information, see http://www.echr.coe.int/Documents/Convention_ENG.pdf
- 29 This Constitution is a completely revised version of the original Constitution of 1919. Its section on freedom of expression and right of access to information was written as part of the revision of basic rights and liberties, approved in 1995. The new Constitution was approved in 1999 and entered into force in 2000. For an English translation, see <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>
- 30 <http://www.finlex.fi/en/laki/kaannokset/2003/en20030460.pdf>
- 31 <http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf>

Today...

Global, European and National Perspectives

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A Forefather of Freedom of Expression

Frank La Rue

In every historical period, there have been women and men who are willing to launch new ideas and to propose principles and initiatives that look forward and that enhance respect for the basic rights and fundamental freedoms of others. This has never been easy and in many cases has had severe consequences.

Many of the rights and freedoms we recognise and defend as legitimate today are derived from the Universal Declaration of Human Rights – UDHR, drafted in 1948 after World War II, which also inspired subsequent conventions, in particular the International Covenant on Civil and Political Rights – ICCPR and the International Convention on Economic, Social and Cultural Rights – ICESCR. We often ignore that this initial Universal Declaration was a consequence of the horrors of the War and the desire to never allow them to be repeated, and that it aimed to establish permanent peace in the world. But it was also the result of an accumulation of struggles, of principles promoted and of legislation drafted as a result of the proposals of these foresighted individuals, who had in several periods proposed the need to recognise and guarantee human rights and fundamental freedoms.

This is the case for freedom of expression and access to information. For this issue in particular, we have to look at the Magna Carta, written 800 years ago, which established the separation between state and religion that enabled freedom of conscience and thought; the First Amendment of the US Constitution of 1791, which established freedom of expression in a specific way; and The French Revolution, which established general freedoms and equalities before the law in what had until then been feudal Europe.

But it is not until recently that we have come to recognise that the first law on the right to freedom of expression and access to public information – *His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press* – was enacted in Sweden in 1766. This law was influenced by, among others, the naturalist and philosopher Peter Forsskål from Helsinki, who had studied at Uppsala University, was also a student at Gottingen University, and had published a pamphlet in 1759 entitled *Thoughts on Civil Liberties*.

Forsskål had clearly understood, as a scientist and philosopher, that to achieve the “common good” we need the participation of “one and all citizens”, and that this meant they should be well-informed in all matters related to the public interest and activities carried out by those in government who represented the interest of society as a whole.

In paragraph twenty-one of his pamphlet, Forsskål wrote:

Another important right in a free society is the right to contribute to the public good. But for this to happen, it must be possible to make the state of affairs in society known to one and all, and everyone must be free to express their thoughts about it. Where this is lacking, liberty is not worth its name...

This pamphlet was subsequently banned, but it had already circulated sufficiently, and thus in 1766 it inspired the law that was proposed, becoming the first law on freedom of expression and access to public information that we have record of in the world.

These events probably affected Forsskål's decision to participate in an expedition to do botanical research in Arabia Fenix, now Yemen, where he eventually died from Malaria at age 31, having done extensive research into botanical and animal species, as well as linguistic research in Arabic.

Today we must pay tribute to this outstanding naturalist and philosopher, who was passionate about his scientific research, but who was also passionate about recognising the right of everyone to access information and express opinions, and above all who was brave enough to publish his views.

What we recognise today as an unchallenged civil liberty was enabled by the fact that individuals like him took upon themselves the responsibility of expressing their views, regardless of the consequences.

It should also make us reflect on how today, even if it is a recognised Right, it is still being challenged and denied by authoritarian rulers who are afraid of informing society and building transparency, and who are particularly afraid of the criticism they may receive from those under their authority.

We are living in a world where still today access to information and freedom of expression are not fully accepted in all states, where freedom of the press is still being persecuted and often times repressed. This shows us that the call of Peter Forsskål is still alive and more necessary than ever and that in 250 years we have still not made it a reality for all, despite the fact that the 2030 Agenda for Sustainable Development establishes in Goal 16 that the basis for any possibility of development is to have societies in peace, that are inclusive, that have access to justice, transparency and that guarantee public access to information (approved in the UNGA 2016).

Public Access to Information in Today's Europe

What Would Peter Forsskål Say?

Helena Jäderblom

I believe that Peter Forsskål's initial reaction, if he heard about the current status of access to official information today 257 years after he published his *Thoughts on Civil (in 1759) Liberty*, would be "wow". However, after learning how slow the general development has been in this area throughout Europe, he might not be overly impressed, especially considering the positive developments for all the other freedoms he advocated in his pamphlet.

Peter Forsskål had been dead for three years when the world's first rules on access to official documents were enacted in Sweden's first Freedom of the Press Act in 1766. Those first rules were intimately connected to freedom of the press: Various documents from the Government, Parliament and courts were to be released on demand and were free to be published.

Sweden, and Finland as part of the Swedish realm until 1809, was alone in legislating on the matter well into the 20th century, when Finland resurfaced in 1951 and Norway and Denmark followed in 1970 (although Denmark introduced restricted rights from 1964), with Iceland being the last Nordic country in 1996. Other Western European examples are France in 1978, The Netherlands in 1980, Greece in 1986, Austria in 1987, Italy in 1990, Belgium in 1994, Ireland in 1998, Liechtenstein in 1999, Britain in 2000, Switzerland in 2004, Germany in 2005, Portugal in 2007, Malta in 2008 and Spain in 2014.

The reasons for introducing public access to information in Western Europe have varied, but have often been connected to movements that lobbied around issues of the relationship between the authorities and the citizens, often in areas such as consumer rights and the environment.

The former Soviet states have obviously had a different, but also more coherent, development. It was natural in the wake of the collapse of the Soviet Union that the various states, in their striving for democratisation, would focus on legislation meant to reform the administration and protect freedom of information and expression. From 1992 when Hungary introduced rules on access to official information until the late example of Ukraine in 2011, most of the former Soviet states now have legislation in this area.

I do not know whether Peter Forsskål ever reflected on the international spread of the right of access to official information. I'm sure he would be surprised and delighted to learn that the principle has not only gained ground in various other countries, but also within the context of international cooperation. Thus, we have rules on access to information on EU institutions that grew from fairly limited rights of access to documents produced by these institutions in the early 1990s to a general right of access to all documents held by them granted by a regulation from 2001.

Furthermore, we have the embryos of internationally binding rules on a general right of access to official documents in the form of a Council of Europe convention from 2008, which however is still awaiting enactment following ratification by a sufficient number of states. It should also be mentioned that there are some recent developments in the case law of the European Court of Human Rights.¹

Turning back to Peter Forsskål, and bearing in mind his endeavors in the field of natural science – we all know he died in Yemen in 1763 whilst collecting animal and plant species on behalf of the Danish king. This is of particular interest in the international context in the area of the environment, where we have the 1998 Aarhus convention, which deals in part with the right of public access to environmental information.

Speculating further on Peter Forsskål's reactions, as I said initially, I believe he would be a bit confused as to why it took the Europeans so long to follow in the footsteps of Sweden and Finland, but quite pleased about the movements and reasoning behind the introduction of the various European laws.

As we see from Peter Forsskål's pamphlet, his main reason for promoting the right of access to official information was the importance 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 everyonewhen 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.”

Thus, Forsskål saw an intimate relationship between accessing official information and being able to freely spread it for the benefit of society. This notion has always been an inherent part of the Swedish system of access to official documents, and therefore the natural place for the access rules has been – and still is – in the Freedom of the Press Act. I hope that Peter Forsskål would be pleased to know this.

Furthermore, the Swedish Freedom of the Press Act states that the aim of the principles of the right to publish official information is to secure both the free exchange of opinion and the availability of comprehensive information. I assume that Peter Forsskål would accept that as part of “society’s wellbeing”, although his formulated purpose might be interpreted as having more to do with prosperity.

Finally, I am curious as to what Peter Forsskål would say about the actual results of freedom of expression and information. In his pamphlet, he states that “ ..., Freedom of the written word develops knowledge most highly, removes all harmful statutes, restrains the injustices of all officials, and is the Government’s surest defense in a free state. Because it makes the people in love with such a mode of government.”

This final reference to emotional aspects may seem a bit exaggerated. Perhaps Peter Forsskål felt the need to paint a picture of the advantages for the King and government in an attempt to have his ideas accepted and was not truly convinced. But I cannot be certain of this, and in any case what he said is right. Perhaps those of us who have benefited from decades or even centuries of freedom of expression should demonstrate our appreciation of our freedoms and democratic systems more often and more intensely, even if this entails expressions of tender and deep-felt appreciation. I would guess that few people have any problem stating that they love freedom of expression and a political system that guarantees this freedom!

I hope Peter Forsskål would be happy to hear this two and a half centuries after his remarkable pamphlet was published.

Note

- ¹ Editors' Note: See, most notably, the recent judgement in the case of *MAGYAR HELSINKI BIZOTTSÁG v. HUNGARY*, <http://hudoc.echr.coe.int/eng?i=001-167828>: Authorities' refusal to provide an NGO conducting a survey with the names of public defenders and the number of their appointments was held to be a violation of Article 10.

Freedom of Speech is under Threat

Internationally, Nationally and Locally

Stefan Eklund

What strikes me when I read Peter Forsskål's pamphlet *Thoughts on Civil Liberty*, from 1759, is that the 21 paragraphs in the pamphlet echo a longing for human rights for all. "The more a man may live according to his own inclinations, the more he is free." – That's the first line.

There is also a strong longing for the truth. "Truth always wins", Forsskål writes, and "Liberty must be preserved by liberty", because it is better that discontent be expressed with the pen than with guns.

And Forsskål underlines the right to write. Forsskål wishes to see "unlimited freedom of the written word". It is nothing to be afraid of. The truth will always prevail when opinions are allowed to engage with each other.

Today, this freedom is being threatened, both manifestly and in ways that are far more hidden. Let us look at the conflict lines at the various levels of press freedom – internationally, nationally and locally.

At the international level, it is easy to see these threats growing stronger in the context of several countries. The developments taking place in Poland, Hungary and Turkey are obvious examples. Journalistic freedom is being restricted.

In Poland, new media laws give the Government the power to fire editors-in-chief at both the state radio and television companies. These media outlets are now required by law to act on behalf of the nation and are forced to take positions that the government considers patriotic.

In Hungary, the government has turned the state radio and television into a political force absolutely loyal to the government. More than 1,000 journalists have been fired.

In Turkey, journalists, including foreign ones, are imprisoned if their reporting is found to be critical of the regime. Turkey has even acted to influence the way in which media outlets in other countries report on Turkey. In Sweden, the Turkish embassy tried without success to stop a TV documentary about the genocide of Assyrians in 1915. And we all know by now that we shouldn't make fun of president Erdogan, at least not in Germany, where a German comic was sued for a satiric poem about the Turkish president.

Moreover, we have long known that many countries outside Europe, like China and Russia, are impossible to describe as having anything even remotely resembling a free media landscape.

This development is not only observed in the aforementioned countries, however. Organisations such as Reporters Without Borders and the Carnegie Endowment, which regularly measure freedom of the press and the status of human rights globally, are expressing great concern.

When Reporters Without Borders last published its press freedom index, it concluded that: "Ideological movements, governments and private interests join forces to silence free speech". The Carnegie Endowment has noted that, since 2011, more than 60 countries in the world have passed laws that directly limit the opportunity to work for human rights organisations.

In short, the optimism about the flourishing of freedom of speech and human rights that many people felt after the fall of the Berlin Wall in 1989 has not materialised, quite the contrary.

The threat from technology companies

So far, I have only discussed acts of national governments and painted a broad picture of the state of affairs on the international level. But there are other global threats to freedom of expression, not from states but from technology companies like Google and Facebook.

Let me focus on Facebook. As I see it, the company is looking to conquer the world of information. Facebook has, for example, developed a "chattbot", which makes it possible for people to get all their informational needs met by a digital room offered by Facebook. Fredric Karén, editor-in-chief of the Swedish newspaper *Svenska Dagbladet*, has described

Facebook's ambition to connect the world in a single ecosystem, namely its own. Karén wrote:

This development also draws a clear line between the open Internet as we know it today and the closed ecosystem that is emerging and controlled by Facebook. Via Google, we seek information and click on news articles or organization sites. Businesses have websites where they can build their brands and sell their goods. All of this is challenged when companies and the media have to move into Facebook. Not that they necessarily want to, but because that is where the users are.

But Facebook is not a media company. Facebook does not have a publisher, an editor, or any journalistic values. Facebook is a purely commercial channel, with an impact that is changing the rules of journalism completely, right down to the level of the smallest local newspaper.

What would Peter Forsskål think about this? I think he would have been looking for a “dislike button”. In vain, of course, because you can't choose a “dislike button”, which also constitutes a kind of limitation on freedom of expression.

Facebook – and Google – is also the reason that media today are struggling with economic problems. Companies will find their customers via Facebook and Google, not via advertisements in the local paper – or its website. All the advertisers who – consciously or not – have ensured that private public service journalism has kept democracy alive are about to abandon us, if we do not change. It is difficult to complain about this. How can you moralise about these effects of the free market economy without simultaneously advocating for more authoritarian political and economic systems? However, this situation puts great pressure on media outlets to become profitable, and such profitable economic development is, in fact, necessary for the survival of independent journalism.

The threat from politicians

Thus, at present, freedom of the press and freedom of information constitute both a technical and economic issue. And that is on a global level. On a national level, it is worth paying attention to the trend among poli-

ticians who wish to limit freedom of the press. It is an insidious trend, difficult to detect, supposedly aimed at protecting personal privacy. But let me point to some ominous signs, taken from an opinion poll commissioned by a Swedish newspaper organisation, TU. Swedish MPs were asked to comment on statements that all involve restrictions on publishing and freedom of expression:

71 per cent think that no police officers should be allowed to leak information to the media about the contents of preliminary investigations. This means that police officers would be excluded from freedom of giving anonymous information to the press, which is crucial for revealing all sorts of mismanagement in governmental organisations. 51 per cent think that taking photos of private settings without permission should not be permitted. Privacy is important, yes. But such a law would mean that public persons, like politicians, could avoid media coverage even when such coverage is justified. 49 per cent think that the fines for damages for defamation are “ridiculously low” and should be increased substantially. The effect of increased fines would inevitably be more cautious journalism; important and revealing stories might not be written.

I could list more examples here. The inclination of public authorities to deny access to public documents has increased exponentially in recent years. I realize that we in the media face an educational challenge here. What appears to offer citizens protection from improper behaviour on the part of the press is in reality curtailing the opportunities for the press to be an investigative force in a democratic society. This is curtailing our ability to play our role in society as the fourth estate.

The other side of this, of course, is that we in the media have to conduct our work professionally, that we must have effective self-regulation. This is a great responsibility, but traditionally we have always taken it upon us. One can only hope that the economic and technical challenges, which I mentioned earlier, do not tempt us to abandon this responsible position in the pursuit of commercial success.

There is one parliamentary party in Sweden that more openly desires to limit freedom of the press. Here are some examples of statements made by party representatives:

“The Swedish media must be replaced.”

“The Polish right-wing government fires people working within the

public service. As a matter of principle, I promise to go on vacation in Poland once a year.”

“The media are and remain the nation’s enemies.”

All these statements – of which the latter view is now shared by the US President – have been made by senior representatives of the third largest political party in Sweden, the Swedish Democrats. This party has succeeded in making other political parties move in their direction on immigration policy. I hope that other political parties do not follow the direction of the Swedish Democrats when it comes to Peter Forsskål’s ideal of the “unlimited freedom of the written word.”

The threat on a local level

So what is happening in Borås? *Borås Tidning* is one of the biggest – and oldest – local newspapers in Sweden. Since 1826 it has been the main arena for democratic debate in the region, and it reaches around 100,000 readers every day, through its paper edition and website. Borås itself is a rather normal Swedish city, with a population of about 110,000 and a history as one of Sweden’s most important areas for textile and fashion. The latter is still a fact, but the textile industry has left for foreign countries with lower wages.

Borås Tidning is, in comparison with many other newspapers in Sweden, in a good economic condition, but is obviously affected by what I talked about above: Facebook’s journey towards a complete monopoly on information, the economic downfall, and the accelerating attacks on freedom of information.

Let me give an example of the latter:

The biggest hospital in Borås disclosed anonymous information to Borås Tidning and other media about the medical condition of people who are victims of accidents or crime. The reason is, according to the hospital management, to “ensure patient confidentiality”, and “not to contribute to disclose someone’s identity.”

These are valid reasons, but the question is whether the consequences will be the opposite. When information channels to serious journalists are strangled, readers will turn to other sources without journalistic skills: social media and gossip sites of various kinds.

Data can still be disclosed – but only if the patient permits. The absurdity of this is obvious. A person who has suffered a serious accident is, of course, usually not in any condition to answer questions at all.

It should also be added that all newspapers nowadays are exposed to anonymous threats of varying kinds, often digitally. What triggers these threats is the tougher digital climate and increased political polarisation. Being a journalist today may simply be dangerous. This also affects freedom of the press and freedom of expression.

But the big question for Borås Tidning concerns our role in a democratic society. It has always been important. It is those of us in the press who have posed the critical questions to political authorities, reviewed municipal affairs and been a natural place for political debate.

We still do all of this – but do we reach all citizens in the same way as we used to? This is an issue we are concerned with. We know two things: Our printed newspaper subscribers have an average age of 62 years. Our digital subscribers have an average age of 50 years. But where are the young people? On social media.

So is this where we have a future? I think it largely is. But then we are back to the Facebook problem – how can we be a free and independent media in that environment, one without a “dislike button”?

At our local level, we also see signs that politicians are increasingly using social media instead of Borås Tidning to reach out with their message. Now and then it happens that the political representatives of the city of Borås reply to an editorial in Borås Tidning on their own website instead of using our debate pages. Once I asked why. The answer was: “We wanted to have the last word.”

The City of Borås has also introduced a new routine, whereby after each municipal board meeting the participating politicians explain the decisions on a video-clip that is then posted on YouTube. No journalist is present, no questions asked.

And on one occasion, a local politician sent a press release in which she proclaimed that she made it up to 15th place on list of the Liberals aiming for European Parliament after only having campaigned on Facebook and Twitter. Politicians in the future must “choose other venues” to reach out, she wrote. The local morning paper was not mentioned as necessary in the context.

The Swedish royal family and Zlatan Ibrahimovic are other actors in the public sphere that has its own media channels now, free from annoying journalists.

The threat from our own response

What is our response to this? One common answer nowadays is, unfortunately, personalisation. Personalisation means that each reader can design his or her own news selection. If you just want digital news about English football, Swedish poetry and wines from Tuscany (which would suit me fine...), then you can get this and nothing else. This has an attractive commercial potential, I understand that, but what are we actually doing when we offer a personalised news selection? Well, we are giving away our professionalism, our journalistic ability to evaluate, prioritise - even to be an editor! Is that the right way to go? Does this favour democracy? I do not think so.

But we live in an increasingly individualised and digitised world where we have every possibility to get our needs quickly satisfied. For this reason, it is hard to say "no" to the personalisation of news.

And let me ask a question we usually avoid: How much do our readers really care about our democratic role? Is there a future democracy that can do just as well without the media? This is *not* a popular question when I meet with the management of my media company, about that there is no doubt.

Perhaps we are boring our readers with all our whining about how difficult it is to be journalist? Some time ago, one of my good friends, who works with helping young people in crisis, said: "Why do you keep on writing about your business problems? They do not interest me. Give me journalism instead!"

Last year I asked readers in a column if they agreed that Borås Tidning played an important democratic role? I got two emails. One of them contained an affirmative answer.

Then, a few weeks later, I asked readers which one of our comic strips we could replace (it was time for a change). I received 486 responses.

In the end, the printed newspaper will survive for many more years, but for fewer and for an aging audience.

We need to understand that people are changing how they communicate and that we are in the middle of that transformation. To borrow an expression from the Korean cultural theorist Byung-Chul Han:

Digitization has created a Homo digitalis. Homo digitalis communicates digitally, not visibly, in the traditional democratic arenas and is, when it comes to information, self-sufficient.

In this on-going digital revolution, the media need new tools to understand how we can best preserve our freedom of expression. And that is exciting! Don't think about it in any other way. You may have found my article a bit gloomy, but we need to acknowledge problems if we are ever to solve them.

And it is, despite everything I have written above, in the digital world that our problems should be solved, and we need both journalistic and commercial solutions. Moreover, we need to accomplish all this for the sake of freedom of the press, for the sake of democracy, and in the spirit of Peter Forsskål.

Nordic Overview: Rules

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Public Access or Secrecy

Comparison between the Rules in Sweden, Finland, Denmark,
Norway and Iceland as well as International Rules

Oluf Jørgensen

Public Access or Secrecy

Comparison between the Rules in Sweden, Finland,
Denmark, Norway and Iceland as well as International Rules

Oluf Jørgensen

The word *openness* is freely used in public discourse. Public bodies and politicians are referred to as open if they are willing to enter into dialogue with the outside world. Politicians demonstrate openness when they make themselves available for interviews, attend public meetings and take part in discussions.

Many organisations, including public authorities, are comfortable with informing as long as they are able to control which information is given and how it is presented. This control is exercised broadly and extensively, often with the help of professional communications advisers. Openness is, thus, provided on the authorities' terms.

The word *transparency* is also used, often with varying meanings. The word can have a broad meaning, in line with openness, or it can indicate a more specific requirement for authorities. Transparency can also refer to clear and easily understood information.

Access

The term *access* has a more specific meaning than openness and transparency. Access refers to access to authentic information about the activities of public bodies, bases for decisions, etc., without the information being mediated or controlled by some authority or by politicians.

Secrecy is the opposite of public access. Information can be kept secret when there is no right to access.

There is a difference between access to meetings and access to official documents. Access to meetings concerns, for example, legal proceedings

or the meetings of political bodies. Access to documents concerns access to written documentation and other forms of fixed information.

Access to meetings was the original form. For example, it is well-documented that the roots of the Althing (Iceland's Parliament) go back to 930 AD, starting with an annual gathering at Tingvellir, at which all free men not subject to punishment could meet. The inspiration for the Althing came from Norway, where gatherings at meeting places were known as far back as 800 AD. Access to meetings is still important, and today it includes the right to attend court proceedings, parliamentary meetings and meeting of other political decision-making bodies.

Access to official documents came much later. In 1766, Sweden was the first country in the world to introduce public access to official documents as part of its constitutional Freedom of the Press Act (*tryckfrihetsförordningen*).

Freedom of information

With the development of the comprehensive and bureaucratic organisation of public administrations and powers, access to documents became important for monitoring the exercise of power and creating the basis for a qualified debate.

Human rights were strengthened in the development of democratic values after World War II. Freedom of information as the right to impart and receive information was included in international conventions together with freedom of expression, and has gradually been developed as one of the essential characteristics of a democratic society as part of basic human rights.

Freedom of information has two elements: First, the right to seek and receive available information, including access to independent media and the Internet. Second, the right of access to documents and data that the authorities not make available on their own initiative.

For almost 200 years, the Swedish law of 1766 on access to information was unique. The other Nordic countries, like the rest of the world, followed around two hundred years after Sweden. Finland adopted a law on access to information in 1951, Denmark and Norway in 1970, and Iceland in 1996.

The legal basis

Nordic rules

Freedom of information is rooted in the constitution in Finland, Norway and Sweden, but not in Denmark and Iceland.

The constitutional Freedom of the Press Act in Sweden (*tryckfrihetsförordningen*) establishes not only a general principle, but also the basic rules of public access. The current version is based on the revision in 1949. Restrictions are contained in the law on access to information and secrecy (*offentlighets- och sekretesslagen*), and the latest overhaul of this act was in 2009.

The Finnish law on access to information (*laki viranomaisten toiminnan julkisuudesta*) was thoroughly revised in 1999, the Norwegian *offentleglova* in 2006, the Icelandic *upplýsingalög* in 2012, and the Danish *offentlighedslov* in 2013.

Sweden has gathered all the restrictions on freedom of information in the law on access to information and secrecy. In contrast, Denmark and Norway have many exceptions to the right to information in acts other than their laws on access to information.

The Nordic countries have for many years cooperated on legislation under the regime of the Nordic Council. Laws on public access to information have not been part of this cooperation. Despite the close relations between the Nordic countries, there are many significant differences between the Nordic rules on access to information. This article provides some examples in a short form.

The report *Offentligbed i Norden* provides a detailed comparison of the legislation in the five Nordic countries and full references can be found there.¹

International rules

International rules play an important role as a framework for the national rules.

The *UN Covenant on Civil and Political Rights* of 1966, Article 19, and the *European Convention on Human Rights* (ECHR), Article 10, are binding for many states, including the Nordic countries. The European

Court of Human Rights (ECtHR) has ruled, since 2006, that Article 10 ensures news media, journalists, researchers, NGOs and users of social media the right of access to information if the purpose is to contribute to democratic control and public debate.

In November 2016, The Grand Chamber of the ECtHR ruled that freedom of information is an inherent element of the freedom to receive and impart information enshrined in Article 10. The Grand Chamber found a “broad consensus, in Europe (and beyond), on the need to recognise an individual right of access to State-held information in order to assist the public in forming an opinion on matters of general interest”.²

The European Convention on Access to Official Documents was the first international convention dealing exclusively with access to documents. It was drawn up by the Council of Europe and signed in 2009 at Tromsø, and thus may be referred as the *Tromsø Convention*. This Convention enters into force when 10 countries have ratified it, but by mid-March 2017, only 9 countries had done so, including Norway, Sweden and Finland, while Denmark and Iceland have not yet.

The Nordic countries have differing relations to the EU. Denmark, Finland and Sweden are Member States of the EU, while Iceland and Norway are not members of the EU, but participate in the European Economic Area (EEA).

The *EU Regulation regarding Public Access* to documents of the EU institutions was adopted under a Swedish presidency in 2001. In 2009 the Lisbon Treaty made the fundamental rights formulated in the Charter of Fundamental Rights legally binding. Accordingly the EU may not give weaker protection to human rights than the ECHR.

The *EU Regulation on the Protection of Personal Data* and the *Directive on Reuse of Public Sector Information* (PSI) applies to the EEA as well as the EU Member States.

The 2003 *UN Convention Against Corruption* is binding on many States including the Nordic countries. This convention focuses, among other things, on transparency about financial transfers.

The 1998 *Aarhus Convention on Access to Information in Environmental Matters* is of essential importance. This convention has been ratified by nearly all European States including the Nordic countries, and by EU.

The *EU Directive on Public Access to Environmental Information*, which is based on the Aarhus Convention, also applies to the EEA.

The *Tshwane Principles on National Security and the Right to Information* address the question of how to ensure public access to information without jeopardising legitimate efforts to protect people from security threats. The Principles were finalised in Tshwane, South Africa, in 2013.

The Parliamentary Assembly of the Council of Europe supports the Tshwane Principles and calls in a resolution on the competent authorities of all Member States of the Council of Europe to take them into account in modernising their legislation and practice.³

International standards in progress

The *UN Human Rights Committee* stated in 2011 that the right to access should apply to:

All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party.” The Committee added a functional criterion, stating that: “The designation of such bodies may also include other entities when such entities are carrying out public functions.”⁴

The judgment of the *Grand Chamber of ECtHR* from November 2016 is noteworthy for its clarification of Article 10 on access to information. The Court places emphasis on the same threshold criteria stressed in many freedom of expression cases:

Disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the public at large.

The public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which con-

cern an important social issue, or which involve a problem that the public would have an interest in being informed about.

In this connection, the privileged position accorded by the Court in its case-law to political speech and debate on questions of public interest is relevant.⁵

EU law is playing a growing role in the development and regulation of freedom of information. In a number of its judgments, the *Court of Justice* of the European Union has emphasised the importance of freedom of information. Important milestones have been a judgment in 2007 on access to the advice given by the European Council's legal service, and a judgment in 2013 on access to a proposal that was included in the decision-making process of a working party of a Council of Ministers.

In both cases, the Court referred to the preamble of the regulation, with its emphasis on the transparency of legislation:

Openness in that respect contributes to strengthening democracy by enabling citizens to scrutinise all the information which has formed the basis for a legislative act. The possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights.⁶

The Aarhus Convention and the EU Directive has laid a firm foundation for access to environmental information, especially concerning emissions. The Court of Justice clarified in two judgments in November 2016 what the expression *information on emissions into the environment* must be understood to mean. The expression refers not only to information related to actual emissions, but also information on foreseeable emissions from products into the environment. The expression also refers to information enabling the public to check whether assessments of actual or foreseeable emissions are correct, as well as the data relating to long-term effects.⁷

Significant differences

The scope of the rules

The rules on public access in the Nordic countries typically cover state, regional and municipal authorities. However, the administrative func-

tions of the parliament and the courts in Denmark and Iceland are not covered, and this is in clear contradiction to international standards.

Companies for which public authorities hold more than half of the capital are covered by the laws on access in Iceland and Norway. This also applies to municipally owned companies in Sweden, while state-owned companies are excluded. The law on access in Finland does not include companies fully or partly owned by authorities. In Denmark, the law covers many semi-public organisations, but companies are only covered if public authorities hold more than 75 per cent.

In Finland and Iceland, tasks that are outsourced by a public authority are as a rule covered by the law on access to information, but not in the other Nordic countries.

Registration, search tools, form and format

The right of access to authentic documents requires registration and archiving with unchanged content and form.

The rules in Sweden, Finland, Norway and Iceland require summary records ensuring effective overview. Norway, for example, requires registration of: the dates of the origin, dispatch and registration of the document, the case or document number, the sender and/or recipient, and a short description of the content or subject of the case. The Danish law requires only registration of: the date of receipt or dispatch and a short description of the subject matter of the document.

The volume of documentation and electronic processing presents a challenge to ensuring authenticity. The original version can disappear or be changed without trace unless security measures are introduced. The Nordic countries have differing requirements in this regard. The Finnish rules are at the forefront concerning authenticity and require all public authorities using electronic registers to take special security measures, including authorising employees and automatic registration of who makes changes and when.

Norway is clearly at the forefront regarding access via Internet to the summary records of documents and good searching facilities. Since 2010, Norway has had in place a joint service for document registers from all

State authorities. Anyone can use OEP (oep.no) without charge to seek information across the boundaries of different authorities and to demand access.

The legislation in Finland, Denmark, Norway and Iceland ensure access in electronic form as a basic rule, but this is not the case in Sweden.

Personal information

The Swedish rules give greater access to personal data than do the rules in the other Nordic countries, for example data on pensions, student support, school grades and education.

Sensitive information on individuals, for example, on health, sexual orientation, social problems, religious and political beliefs, is protected in all Nordic countries.

Denmark is the only Nordic country in which the identity of applicants for public sector jobs is kept secret. Sweden has an exception for applicants for top positions in the government administration.

In Finland and Sweden, the right of public access also applies to the content of the application submitted by the person who gets the job. In Iceland and Norway, this right only applies to the other applicants. In Denmark applicants do not usually have the right to information about other applicants.

Sweden, Finland, Norway and Iceland ensure access to information about everyone's taxable income and tax payments. There are differences in the practical availability. This information is most easily available in Norway, where the tax authorities allow access via Internet. Tax information about individuals in Denmark is secret.

Financial transfers

The Nordic laws on access to information have brief passages with general exceptions for protection of commercial interests. These exceptions cover information on business issues, when access to a concrete assessment will damage a business enterprise. In Denmark, a clear presumption that disclosure will do harm has been added.

The Norwegian guidelines to the law give a number of suggestions for drawing the line between access and secrecy. Information that other

companies could exploit unfairly must be protected, for example information about market analyses, business strategies, customer lists, production methods and product development, but not general information about the financial status of a company.

The Nordic countries have differing rules about access to tenders from companies in connection with public procurements. Finland, Norway and Sweden generally allow access to information, but at different stages of the process. Sweden allows access from the moment the authority opens the tenders or at the latest when it has chosen the supplier. Norway allows access when the supplier has been chosen. Finland allows access to information about tenders when a contract has been concluded. Specific assessments can lead to restrictions, but the rules express a clear presumption that the total pecuniary value of a tender should be made public. Denmark and Iceland do not have special rules on tenders.

When access includes the total pecuniary values of tenders, the right of access should consequently also include at least the value of a contract. The Danish add-on of clear presumption of harm means that even information on the total pecuniary value of a contract can be kept secret.

State security

Exceptions protecting state security are based on broad and imprecise criteria. This applies to laws in all Nordic countries.

The Swedish, Finnish, Norwegian and Icelandic rules provide for information to be kept secret when this is specifically necessary for state security. The Danish law on access to information allows information to be kept secret if it is significant for state security, without a requirement for a concrete assessment.

Decision-making processes

The countries' respective legislations on right to access have two kinds of limitations: 1) Exceptions to protect the content of information, for example, protection of personal information, commercial interests and state security. These types of exceptions are typically identical to the obligation to secrecy. 2) Limitations to protect working and decision-making processes, which are typically designed to ensure undisturbed

preparatory work. These types of exceptions are normally not associated with an obligation to secrecy.

The Nordic countries have very different rules for protection of working processes and decision-making processes, distinctions between internal and external documents, etc. Here the reference is limited to some important differences concerning preparations and the basis for political decisions. The report *Offentlighed i Norden* provides a detailed comparison.⁸

The Finnish law ensures general access to information about the basis for decisions. Documents that are considered important for deliberations must be made public before the decision is made. The law contains a number of time limits for keeping other internal documents secret.

Investigations, statistics and reports describing the backgrounds, alternative solutions and consequences must be made public when a proposal, etc., is complete. The agenda for government meetings is made public prior to a meeting, and record of decisions soon after the meeting.

Under Swedish law, the right of access to the ministries' documents applies when the decision has been made. This applies to information about factual circumstances, professional assessments and the professional assumptions for decisions. Information that ministries have received from other entities is covered by the right of access before the decisions has been made.

After the amendment in 2013, the Danish law has a broad exception for information that may be needed at some time or another to ministerial advice. The law also contains an exception for documents exchanged between ministers and individual members of parliament that constitute the basis for political negotiations and agreements. These exceptions are not limited in time.

The Danish law includes a clearly expressed right to information about the factual basis of a case at any stage of the case, but the right to access excludes professional assessments of the consequences of a law or a plan even in its final form.

The Norwegian law on public access does not provide for a right of access to information about the internal bases for decisions made by state authorities. This exception, which covers both the factual basis and assessments about a decision, is without a time limit.

The Icelandic law provides for a right to information on the factual circumstances of a case, but the right does not apply to documents that are drawn up for ministerial or government meetings. The Icelandic exception for working documents expires after eight years. The agenda for government meetings must be made public after each meeting.

In the Nordic countries, Norway ensures the greatest degree of access to local government with access to documents that are exchanged between entities that have delegated independent decision-making authority. In Norway and Finland, agendas and annexes with the relevant documents must be made public prior to the meetings of all local government political bodies.

Environmental information

The Aarhus Convention and the EU Directive on public access to environmental information provide for extensive access to environmental information. Exceptions may only protect the interests listed in the Convention and the Directive. Exceptions must be interpreted restrictively, and access can only be refused after concrete balancing with the interest of public awareness.

Access to *information on emissions into the environment* applies regardless of exceptions for protection of commercial interests, decision-making processes, etc.

The Norwegian law on environmental information fulfils the requirements of the Aarhus Convention and the EU Directive, and goes further by ensuring a right to information from private companies. Furthermore, the Norwegian law on product control ensures information on the effects of products for health and the environment.

Denmark and Iceland have special laws on environmental information, but the Icelandic law does not require restrictive application of exceptions with specific weight on consideration of public access.

The Swedish law ensures that many of the secrecy provisions cannot apply to information regarding emissions. For other types of environmental information, secrecy shall only be overridden if it is obvious that public availability has priority over the protection interests.

The legislation in Sweden and Iceland does not fully meet the international standards on access to environmental information.

Appeal systems

In Finland and Sweden, a refusal of access can be brought before the administrative courts. In Norway, a refusal can be appealed to the ordinary administrative appeal body for the area, and in Denmark directly to the highest ordinary appeal body for the area.

Iceland has a special appeal board for freedom of information. All refusals can be appealed directly to this board, which has authority to make binding decisions.

In Sweden, refusals of the Government cannot be appealed, neither to the courts nor to the Ombudsman. Denmark too has no appeal body for the highest level of the state administration, but decisions can be reviewed by the Ombudsman and the ordinary courts. The situation in Norway is similar to that in Denmark, but the Ombudsman cannot act if a decision has been taken by the Council of State.

In Finland, the decisions of the highest level of the state administration can be appealed directly to the Supreme Administrative Court, and in Iceland to the special appeal board for freedom of information. In Finland and Iceland, the Ombudsmen can also deal with decisions of the highest level of the state administration.

The decisions about access from administrative courts can be enforced in Finland but not in Sweden. Decisions of the appeal boards in Iceland and Norway can be enforced, but as a rule not in Denmark. Decisions of the ombudsmen cannot be enforced.

Tradition and progress

The weight of tradition

For hundreds of years, Sweden was the dominant power in the eastern parts of the Nordic region and Denmark in the western parts. At the time when freedoms were introduced in the eastern part, the western part of the Nordic region was still subject to absolute monarchy.

There are still certain differences between the eastern and western parts of the Nordic region. The rules on access to information in Finland and Sweden do not include internal memoranda, while the rules in Den-

mark, Norway and Iceland have exceptions. The administrative courts are important complaint bodies in Finland and Sweden, while administrative entities deal with complaints in Denmark, Norway and Iceland.

However, the Finnish law on access to information has moved away from the Swedish tradition, especially with the 1999 revision in Finland. Differences have also emerged between the laws of the western countries of the Nordic region – Denmark, Iceland and Norway – in the most recent revisions of the laws.

Another pattern is that the older nation states – Denmark and Sweden – tend to be more traditional than Finland, Iceland and Norway. The Danish and Swedish traditions of state administration and legislation affect the rules on access to information.

The Swedish constitutional tradition emphasises the sovereignty of the people, and the decisions of the government cannot be set aside, neither by the courts nor other appeal bodies. It is paradoxical that a tradition that attaches considerable weight to the sovereignty of the people does not allow the citizens to appeal a refusal of access to information. It is also paradoxical that a modern country such as Sweden has not ensured the right of access to information by electronic means as a rule, when such a form is desired by the applicant.

Under the absolute monarchy in Denmark, civil servants and royal advisers could rule, with the king being placed above them on a pedestal. Secrecy was even evident in the name of the highest state council until 1848: Gehejmekonseil or Gehejmestatsråd.

In modern times, the broad exceptions in the Danish law still allow for secrecy at the highest levels of the administration. It is very strange that Denmark, which is otherwise characterised by openness, has maintained and even strengthened the secrecy of documents that form the basis for political decisions.

Progress in the Nordic Region

In the above, examples of Nordic rules are mentioned that do not meet the international standards.

On the other hand, some Nordic rules are at the forefront of international developments.

The Finnish law ensures a high level of access to information on political power in the highest state bodies, and this was the aim of the amendments to the law in 1999. The Finnish law ensures access to information about the basis for decisions, as a rule before decisions are taken.

The Norwegian law on access to environmental information includes private companies and is thus moved further than the international obligations.

Norway is clearly at the forefront regarding access via the Internet to summary registers about documents and good searching facilities. The electronic public record OEP (oep.no) is under development to give direct access to documents. The expectation is that direct access will soon begin, and be successively extended.

Records from more than 120 Norwegian state entities, including ministries, are gathered in the current OEP. Many Norwegian municipalities have established their own systems. A new generation of the OEP, where all municipalities must enter the same system, is under development. Norway is probably the world leader in search facilities for access to information.

Binding international rules must be followed by national authorities and courts, but it is not a given that adherence always occurs. In two cases where Norwegian law did not ensure the right to access, The Supreme Court in Norway decided that ECHR Article 10 did ensure access.⁹

Norway and Denmark are in the processes of evaluation, which may be followed by amendments to legislation. In Norway, the focus, among other things, is on strengthening the complaints system. The Danish government platform of November 2016 aims at certain restrictions on the broad exception for access to information that may be needed at some time or another to ministerial advice.

According to the Icelandic government platform of January 2017, the obligations of public entities to inform the public will be strengthened. A review of the Icelandic constitution shall be undertaken on the basis of the work that has taken place in recent years, which puts strong emphasis on freedom of information. A proposal for amendments shall be put forward no later than 2019.

Important points

The scope of the rules

Semi-public organisations and the outsourcing of public tasks present a challenge to legislators as regards preventing the weakening of public access. This grey area has grown in recent decades.

The statement of UN Human Rights Committee in 2011 added a criterion covering entities when they carry out public functions. There is a need for clarification, and the key should be the extent to which there are reasons for democratic control independent of the organisation by public bodies, semi-public bodies or private companies.

The rules on access should cover:

- companies that are more than half-owned by state or communal authorities. The Icelandic and Norwegian rules can be models for this,
- other private law entities established by law or under the authority of law, and entities that perform more comprehensive public tasks under supervision and control. The Danish rules can be a model for this,
- outsourced public tasks carried out by private companies or semi-public bodies. The Finnish and Icelandic rules can be models for this,
- infrastructure for energy supply, water supply, public transport, payment systems and telecommunications,
- charitable trusts' administration of funds that have been wholly or partly obtained via contributions from public bodies or tax relief, and
- overall information about the extent of financial arrangements and instruments in which individual banks and other financial institutions are involved.

Registration, search tools, form and format

Access to authentic documents, without changing their form and content, is the *raison d'être* of the rules on access to information.

The rules should ensure registration of documents and accessible overview of the dates of the origin, dispatch and registration of the document, the sender and recipient, and a short description about the subject of the case. The Norwegian rules can serve as an inspiration here.

Security measures should protect documents from amendment or deletion. The Finnish rules can be a model for this.

The rules on access should provide for on-line access to registers with document summaries and effective search functions. The governments and parliaments should adopt action plans to develop electronic systems giving direct access to documents and data. The Norwegian system can be a model for this.

The PSI Directive requires, as a rule, that authorities ensure access to their documents and data in electronic form and pre-existing formats. The EU Directive on public access to environmental information and the Tromsø Convention require the same.

Personal information

Personal information of general interest must be publicly accessible, according to ECHR Article 10. Information of general interest concerns people performing as actors in society, for example information about persons in their roles in politics, administration, religion, social organisations or commerce.¹⁰

Sensitive information about individuals must be kept confidential, according to ECHR Article 8, for example information on health, sexual orientation, social problems, religious and political beliefs.¹¹

Between these categories are types of personal information in relation to which the national rules on access may differ, for example, data on employment, income, tax, pensions, education, exam results and shareholdings. The EU provisions on the protection of personal data do not restrict the right to access by national law, and this is expressly provided for in the new EU Regulation.¹²

In the middle category, the rules can be designed to strike a good balance between protection interests and the need for democratic control.

For example, access to the identity of job applicants may cause problems in current jobs. When a new employee is appointed by a public

body, access to the application of that person may create confidence and prevent nepotism. The Swedish rules on the appointment of top state officials can be a model for all recruitments.

Financial transfers

Preventing and combatting corruption are particularly important, and The UN Convention Against Corruption requires transparency in the management of public finances and reporting on revenues and expenditures.

It is important to distinguish between genuine business secrets and information on financial transfers to and from public authorities.

Exceptions for documents containing business secrets should be restricted to specific information about product development, marketing strategies and similar types of information, which need to be protected to avoid serious harm and unfair competition.

On the other hand, it is important to ensure access to information about the authorities' invitations and choices between tenders, purchases and sales, and other financial transfers such as investments, loans and support to companies directly or through a reduction in taxes.

Public access is necessary to ensure democratic control of revenues and expenditures of public bodies and prevent nepotism. Access is also important for stimulating competition, and to prevent competitive advantages being given to companies that do not live up to the standards set by society.

Systematic publication of information may be a useful means of strengthening the control in various areas. For example, this is one of the reasons for the EU's web portal on payments made by EU institutions and the EU Regulation on publishing information on financial support for individual agriculture farmers.¹³

State security

It is essential – not least in this area – to distinguish between information that needs to be public in a democratic society and information that needs to be protected in order to avoid likely risks of serious injury. The Tshwane Principles on National Security and the Right to Information can be a model here.¹⁴

Governments may legitimately withhold information in narrowly defined areas, such as defence and offensive plans, weapons development, communications systems, the sources used by intelligence services and the identity of the soldiers who participated in the operations and their relatives.

The Tshwane Principles set out specific guidelines for legislation and for concrete decisions, for example: Information about on-going operations must be protected for the length of time that the information is of operational utility. A note to this guideline explains: The phrase “for the length of time that the information is of operational utility” is meant to require disclosure of information once the information no longer reveals anything that could be used by enemies to understand the state’s readiness, capacity, or plans.

According to The Tshwane Principles, there is a very strong presumption, and in some cases an overriding imperative, that some categories of information should be public, for example, information about the number of killed and prisoners as well as other consequences of a war.

This strong presumption for access also applies information relevant to the decision to commit combat troops or take other military action, its general size and scope, and an explanation of the rationale for it, as well as any information demonstrating that a fact stated as part of the public rationale was mistaken.

Decision-making processes

The main purpose of access to information is to strengthen the basis for democratic control, and the participation of citizens in the democratic process. Access to information can reveal mistakes, neglect and abuse of power, and its preventive effect is at least as important. Access is important for upholding the demand for impartial administration, for ensuring a broad basis for making decisions, and as inspiration for development.

It is important to balance the need for access with the legitimate needs to avoid publicity: Officials may need an enclosed space for preliminary deliberations with colleagues about problems in a case. Politicians may need an enclosed space for tactical deliberations and for testing political ideas in informal discussions and during negotiations.

The need to protect the decision-making process typically ends when the process is completed with a decision or agreement. Subsequent democratic control is ensured with a time limit for exceptions when the process is complete. Democratic participation in the decision-making process requires earlier access.

Democratic control and participation will be very severely limited if exceptions for decision-making processes are extended to include information that forms the basis of political decisions, especially if exceptions have no time limit.

It is clear that politicians' communications with and for their party fall outside the scope of access to information if it concerns the party organisation, for example planning for meetings or election campaigns. However, it is generally difficult to distinguish between the roles. Clear criteria should be established to distinguish between communications exclusively related to party-politics and communications related to official roles as head of an authority or as a member of a political body.

A minister's communications will often be related to his/her role in the ministry or the government. If all such communications were to be covered by public access, this would also apply to communications with other politicians that involve informal testing of political ideas. Clear criteria should be established with regard to exceptions for communications dealing exclusively with preliminary political ideas or strategies for negotiations.

The rules should ensure access to:

- information at any time about the facts of a case, including all information that helps to illuminate the facts of a case and the methods and assumptions used. Inspiration can be drawn from the Danish obligation to provide extracts of documents,
- background data for analysis and calculations, regardless of whether they are made by the authority itself, by some other public body, researchers or a private company,
- professional assessments of the substance in a case including the consequences of possible solutions,
- finalised documents and clear criteria should be laid down for distinguishing between finalised and non-finalised documents.

Democratic participation may be strengthened with publishing on the Web of:

- plans and proposals, including their factual and professional bases, in good time before binding political agreements are completed or formal decisions are taken on matters of importance to society. The Finnish rules can serve as a model here.
- agendas prior to meetings of political bodies in municipalities and regions including presentations of proposals and their attachments. Inspiration can be drawn from Finland and Norway.
- agendas prior to meetings in the government and decision-making governmental committees. The decisions on cases and the annexes should be published soon after meetings. Inspiration can be drawn from Finland.

The international standards on access must be respected in order to ensure democratic control and participation. The Grand Chamber of ECtHR has clarified the importance of Article 10 on access to information, with special emphasis on the importance of political debate on questions of public interest.¹⁵ The EU Court of Justice has given special attention to citizens' opportunity to read the considerations underpinning legislative actions.¹⁶

Environmental information

The purposes of the Aarhus Convention and the EU Directive on public access to environmental information are to strengthen public participation in the decision-making process, the accountability of decision-making and public awareness as an important part of the efforts to promote a clean environment and improve health.

Information about emissions into the environment must be public regardless of commercial interests. The supreme body of the EU Court has ruled that the concept not only includes information on actual emissions, but also information on foreseeable emissions. The case was specific to access to documents relating to the authorisation of a product on the market, but has general importance. The judgment has also significance for access to the basis for other administrative and political decisions:

In order to be able to ensure that the decisions taken by the competent authorities in environmental matters are justified and to participate effectively in decision-making in environmental matters, the public must have access to information enabling it to ascertain whether the emissions were correctly assessed and must be given the opportunity reasonably to understand how the environment could be affected by those emissions.¹⁷

The rules on access to information should also ensure public access to information on the effects of products on health and the environment. Inspiration can be drawn from the Norwegian law on product control. This law applies to both public bodies and private companies, like the Norwegian law on access to environmental information.

Appeal system

An effective appeal system is essential to implementation of the rules of access. An independent appeal body, whose decisions are binding and enforceable, is necessary. These requirements should apply to refusals from all bodies covered by the rules, including the highest in the state.

The Tromsø Convention, Aarhus Convention, EU Directive on environmental information and the PSI directive require expeditious review by an independent body with the power to make binding decisions. These international standards are not completely fulfilled in Denmark, Norway and Sweden.

An effective appeal system with high professional skills and rapid responses to requests is also important to the efficiency of processing of access by ordinary authorities.

Summarising thoughts

It is a characteristic of a genuinely democratic society that everyone has the right to access authentic information about the political and administrative exercise of power.

Good conditions for access to information could be achieved by selecting the best from the various Nordic countries' rules, supplemented with international standards.

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Notes

- ¹ Oluf Jørgensen: *Offentlighed i Norden* (Nordicom Information 3/2014). Links to the report, the summary *Access to information in the Nordic Countries* and to the laws and other provisions are available at: www.dmjx.dk/offentlighed-i-norden
- ² The judgment in the case Magyar Helsinki Bizottság v. Hungary, 8.11.2016, Paragraph 148.
- ³ Resolution 1954 (2013) *National security and access to information* 2 October 2013. The Tshwane Principles on National Security and the Right to Information. New York: Open Society Justice Initiative.
- ⁴ Human Rights Committee, 2011, General comment No. 34, p. 18.
- ⁵ The judgment in the case Magyar Helsinki Bizottság v. Hungary, 8.11.2016, paragraph 157-168.
- ⁶ Joined Cases C-39/05 P and C-52/05 P Sweden and Turco v. Council; and Case C-280/11 P Acces Info v. Council.
- ⁷ Judgments the Court of Justice of the European Union in cases C-442/14 and C-673/13 23, November 2016.
- ⁸ Oluf Jørgensen: *Offentlighed i Norden, Nordicom-Information*, 26(2014)3, 149-183 and pp. 25-31 in the summary *Access to information in the Nordic Countries*. Göteborg: Nordicom.
- ⁹ Norges Høyesterett 21 March 2013 about sound recordings in an old case of espionage and 18 December 2015 about video recordings from a police arrest.
- ¹⁰ The judgment in the case Magyar Helsinki Bizottság v. Hungary, 8.11.2016.
- ¹¹ Oluf Jørgensen, The Right to Privacy and Public Figures. On the Limits to Freedom of Expression, pp. 67-77 in Anine Kierulf and Helge Rønning (eds.) *Freedom of Speech Abridged?*, Göteborg: Nordicom, 2009.
- ¹² Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, art. 86.
- ¹³ Regulation (EU) No. 1306/2013 of 17 December 2013 on the financing, management and monitoring of the common agricultural policy.
- ¹⁴ The Tshwane Principles on National Security and the Right to Information, New York: Open Society Justice Initiative, Oluf Jørgensen: *Hemmelig eller offentlig information om sikkerhed og krig* in Peter Vedel Kessing and Andreas Laursen (eds.) *Robust mandat – juridiske udfordringer ved danske militære missioner i det 21. århundrede*” Copenhagen: Jurist- og Økonomforbundets Forlag, 2016).
- ¹⁵ The judgment in the case Magyar Helsinki Bizottság v. Hungary, 8.11.2016, paragraph 157-168.
- ¹⁶ Joined Cases C-39/05 P and C-52/05 P Sweden and Turco v. Council; and Case C-280/11 P Acces Info v. Council.
- ¹⁷ Case C673/13 P, 23. Judgment of the Court of Justice of the European Union.

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Appendix

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Tankar om borgerliga friheten

Peter Forsskål

Peter Forsskål

Tankar om borgerliga friheten

Citat från Gunilla Jonssons 'upplysningar till texten' i *Tankar om borgerliga friheten. Originalmanuskript med bakgrundsteckning*. Atlantis, Stockholm 2009, s. 11-12.
(© David Goldberg, Gunilla Jonsson, Helena Jäderblom, Gunnar Persson and Thomas von Vegesack)

Den text som här följer är resultatet av en ny närläsning av Peter Forsskåls originalmanuskript till *Tankar om borgerliga friheten*, 1759, utan censor Oelreichs strykningar och ändringar. Vi har valt att återge originalet därför att det helt enkelt är en bättre text än den censurerade version som publicerades 1759. På många ställen där Forsskål gör ett klart påstående tvingade Oelreich in ett "nog" eller "kanske", och Forsskåls radikala krav på en tryckfrihet som faktiskt svarar väl mot vad vi lägger in i begreppet i dag förändrade Oelreich till en formulering som öppnade för att behålla censuren (§ 7). Originalets § 8 med Forsskåls plädering för tryckfrihet i religiösa frågor ströks helt, och referensen till de gynnsamma följderna av religionsfrihet i Pennsylvanien i § 10 försvann också.

Forsskåls manuskript finns i Riksarkivet, signum Kanslikollegiet, Inkomna skrivelser, Serie EXII:18, universitetsärenden 1706-1785. Censorns ändringar är införda i manuskriptet med Forsskåls hand, men med ett annat bläck än det ursprungliga. Oelreichs imprimatur på sista sidan är synbarligen skrivet med samma bläck, så man får anta att de arbetat tillsammans med ändringarna.

Den tryckta versionen från 1759 har utgivits flera gånger under 1900-talet, först i Torsten Steinbys, *Peter Forsskål och Tankar om borgerliga friheten*, 1970, sedan 1980 och 1984, sista gången med efterskrift av Teddy Brunius. Den utgavs också med insprängda delar av originalmanuskriptet i *Gyllene äpplen*, del 2, 1991 (2.uppl. 1995) – men detta är första gången som originalet i sin helhet presenteras i tryck.

Litteraturbanken kommer att publicera den svenska originaltexten och en reviderad översättning till engelska under 2017 (www.litteraturbanken.se).



Porträttet målades 1760 av Paul Dahlman strax innan Peter Forsskål lämnade Sverige för Köpenhamn och den Arabiska resan. Porträttet är i Uppsala universitets ägo.

Foto: Julia Gyllenadler

Tankar om borgerliga friheten

§ 1.

Ju mera man får lefwa efter eget behag, ju mera är man *fri*. Näst lifwet kan derföre ingenting wara menniskjor kärare än friheten. Ingen wälberänt förlorar eller minskar den, utan att wara twungen af öfwerwäld och fruktan för något större ondt.

§ 2.

En förmån, som af menniskjor så högt älskas, behöfwer ingen inskränkning, der alla älska dygd. Men wi böjas ofta till laster och oförrätt. Alltså böra gränсор sättas för oss, friheten bör mista sin skadeliga del, och det allenast blifwa öfrigt, att man efter yttersta wilja får gagna andra och sig sjelf, men ingen skada.

§ 3.

När *hwar och en* i ett samhälle har tillstånd dertill, så finnes der en rätt *borgerlig frihet*.

Till den hörer altså, att ingen hindras ifrån det, som är anständigt och för det allmänna nyttigt, att hwar rättsint får med trygghet lefwa, lyda sitt samwete, nyttja sin egendom och bidraga till sitt samhälles wälgång.

§ 4.

För denna *friheten* kunna altid de wara *farligast*, som äro mäktigast i landet, genom deras ämbeten, stånd, eller rikedom. De missbruka ej allenast lätt den makt de äga, utan kunna ock ständigt öka sina rättigheter och sin styrka, så att de öfriga inbyggare måste bäfwa för dem mer och mer.

§ 5.

Ty det utgör ej ett samhälles hela frihet, att undersåtarena äro trygga för Regentens öfwerwäld. Det är ett stort steg, och det första till allmän

sällhet. Men undersåtare kunna ock tryckas af hwarandra. Och i många Republiker, såsom den Polska och de Italienska, hwilka yfwas af frihetens älskansvärda namn, der äro likwäl de mästa menniskjor de förnämmas trälär.

§ 6.

Frågar någon, *hwilkens öfvermakt wore för ett land olyckeligare, Regentens eller egna medborgares?* håller jag före, att den senare är mer odrägelig, men den förra mer obotelig: och att man derföre bör sky och rysa för den förras allramäst. Ty utan att den häfwes, kan aldrig den andra häfwas. I Enwåldsherrars namn och med deras makt regeras ofta mycket af wrånga undersåtare, owärdiga till sin öfwerhets nåd, men säkra genom dess åtnjutande. Mäktiga Regenters öfwerwåld är ock för flera orsaker swårare att hjälpa. En för långt drifwen tanke om kröntas helighet, skyddar mer än mycket äfwen de mäst orättwisa förstar. Många föreställa sig, att aldrig för mycket inrymmes åt en menniskja, som är så mycket upphöjd öfwer menniskjor, som är Gudomligheten så nära. Kungarna i Barbariet leka onäpst med sina undersåtares lif, efter de hållas heliga. Non-jurorerna i England göra sig samwete öfwer att ej wara trogna emot en otrogen Kungaslåkt. Och, att ej gå långt efter exempel, då Sverige, under K. *CARL den tolfte Krig*, war utarmat på folk, lifsmedel och penningar, troddes likwäl denna hårda Hjelten* ej förderwa utan förswara sitt fosterland. Således känna ej altid undersåtare Regentens orättwisa, och om de känna den, kunna de dock ej lätt befria sig. Förstarna bewaka ensamma, när det omtränger, sina fördelar, de råda ensamma i all ting.

Hos en enda är båtnad och styrka af hela landet samlad. Men *då somliga medundersåtare tryckas af de andra*, märka alla obilligheten deruti, och då flera på en gång göra missbruk af sin makt, öfwerwinner den starkare folkhopen lättare deras skingrade afsigter, och skingrade krafter. Dem gifwer derföre allmänhetens wördnad och deras egen makt icke nog säkerhet.

Enda skygden för dem är, att dölja den oförrätt de utöfwa. Men den kan ej länge döljas, om hwar och en får i allmänna skrifter tala på det, som handlas emot det allmänna bästa.

*Se *Enwåldets skadeliga påföljder*. Stockh. 1757.

§ 7.

Borgerliga frihetens lif och styrka består för den skull uti en *inskränkt Regering*, och en *oinskränkt skriffrihet*; allenast hårdt ansvar stadnar på allt skrifwande, som utan gensäjelse är oanständigt, och innehåller hädelse emot Gud, skelsord emot enskildta, och retelser till uppenbara laster.

§ 8.

Gudomliga uppenbarelsen, förnuftiga Grundlagar och enskildtas heder, kunna ej af en slik skriffrihet lida någon farlig anstöt. Ty sanning segrar alltid, då den får med samma fördelar bestridas och förswaras.

§ 9.

Twärtom, Skriffrihet uppdrifwer wetenskaperna till sin höjd, röjer alla skadeliga författningar, tyglar alla ämbetsmäns orättwisa, och är Regeringens tryggaste förswar i ett fritt rike. Ty den gör hela menigheten kär i ett sådant regeringssätt. Man hörer ej lätteligen i England farliga anläggningar emot wäl inrättade grundlagar. Oordningar stå dock der tidigt att hjälpa endast genom allmänhetens fritt yttrade missnöje. Deremot hafwa wi uti ett ej obekant rike* haft ett wigtigt exempel derpå, att då en ojämt delad frihet med hat och twång förswaras, skrider man lätt till wåld och förtwiflade steg; att den, som har för litet, mister hällre allt, än att han skulle utan afund och hämnd se för stor del af samhallets och sin frihet bortröfwad af sina likar och medborgare. Ty den som har litet att förlora, wågar sitt med liten saknad, då han kan förmå sin owän och sin plågåre att förlora mycket. Det är wäl ej berömligt, men likwäl wanligt. Friheten måste derföre bewaras med frihet. Missnöjdas twång och nedtryckande sätter den i yttersta fara, antingen de hafwa fog till missnöje eller intet. En wis Regering lämnar derföre menigheten hällre lägenhet, att yttra sitt missnöje med pennor, än med andra gewär, hwilket uplyser å ena sidan, stillar och förekommer buller och oro å den andra.

*Danmark

§ 10.

Det är förut nämndt (§ 3.) att borgerliga friheten uträttar, det hwar rättsint får med trygghet lefwa, lyda sitt samwete, nyttja sin egen- dom och bidra till sitt samhälles wälgång. Hwardera stycket will jag korteligen förklara. Lagen sätter vårt *lif* i mycken säkerhet, då den stad- gar, att ingen får ostraffad göra wäld på en redlig människas kropp och hälsa. Men man måste likwäl höra anklagare och fullfölja domares utslag, om ock intet brott finnes hos den angifna. Ty samhället kan ej wara utan domstolar, och icke dommare alltid opartiska.* Folkets hat och obändiga ifwer har ock ibland borttryckt de oskyldigaste medborgare. Ingen fara är större än denna, för lif och rykte på en gång; och den kan antingen icke ändras, eller torde likwäl frihet att offentligen förswara sig, kunna stilla folkets wrede, och afskräcka dommare ifrån konstlande. Kan ock det ej uträttas, så är åtminstone den billigaste erättning för så stor oförrätt, att en olycklig dömd får, såsom i England å daga lägga för sina landsmän, att han dör oskyldig.

*Se flere utkomne skrifter om *rättegångar, dommare, samt en rätt skriftens fri- och säkerhet.*

§ 11.

Samwetet grundar sig wäl ofta på falska meningar. Hwilka ingalunda böra tålas, om de aldeles gå ut på samhällets och människors förderf, såsom Jesuiternas trolösa reglor. Men merendels kunna de, som ett felande sam- wete tyckes göra farliga, blifwa goda medborgare, om allenast samhället litet lämpar sig efter deras wilfarelse. Mennonisterna sky för ed, men man kan lika tryggt lita på deras ja och nej. Många af dem kunna ej förmås att angripa fienden, men de skjuta gerna ihop pengar till sol- dater underhåll. Att således religionernas åtskilnad kan wara, utan att störa borgerliga enigheten visar det lyckliga, och genom frihet hastigt folkrika, Pensylvanien till öfwerflöd. In under sjelfwa friheten gifwa sig de orätta religioner efter hand för sanningens styrka, och aftaga, då de ofta genom förföljelse uppretade till en dåraktig nit sprida sig häftigare, liksom en öfwerträckt eld. Ändteligen, då ingenstädes alla kunna wara utan willfarelse, är det af liten wigt, antingen de fela uppenbart, som i England, eller skrymta, som annorstädes.

§ 12.

Egendom har man i et samhälle, dels såsom Statens ledamot, dels såsom enskildt. Af det förra slaget äro det allmännas inkomster och hwad dermed förwärfwats, samt det allmännas tjänster. Af det senare är det, som hwar och en för sig äger. Bägge böra lagarna skydda emot öfwerwåld och fria ifrån missbruk. Hwar och en inbyggare bör äga billig del i det allmännas tunga och fördelar. Ty samhället är gemensamt, och friheten bör wara äfwenså. *Landets skatter* böra derföre ej samlas genom för dryga utgifter af några, utan efter egen inkomst bör hwar och en bidraga till det allmännas. Hopp att tillträda *samhällets tjänster och äreställen* bör ock aldrig wara någon wärdig betagit.

§ 13.

Om tjänliga prof skulle afläggas wid *tillträde af hwarje publik sysla*; om de, som aflagt sådant, finge stiga endast till nästa högre ämbete, i ordning efter deras tjänstetid i förra syslan; och om första steget tillhörde den, som först wisat sig skickelig dertill; så komme ej tjänster i owärdiga händer, så skulle ej hög släkt, penningar och gynnare säkrare befordra än egen flit och skickelighet.

§ 14.

Inga prof äro lättare och påliteligare, än förhör i kunskapen och utöfningen af det, som hörer till syslan. Sådana brukas för Prester hos oss, och för alla ämbetsmän i China. Men det är derwid ingen konst att ogilla den bästa, om man får fråga hwad man will, och dömma, som man will. Derföre behöfdes, att wid hwar och en sysla utsätta wissa wetenskaper, wissa böcker, wissa instruktioner och förrättningar, för hwilka man må wara förbunden, att göra offentlig räkenskap.

§ 15.

Det tillåtes lätt, att använda *egna ägodelar* till sin och samhällets nytta. Men alla slags egendomar kunna ej af hwar och en så lätt förwärfwas, som det wore för samhället gagneligt.

Ingen kan hwar han will med arbete eller betalning skaffa sig land, fastän många, till det allmännas stora skada, hafwa mera än de häfda. Lagar, sådana, som Mosis war hos Hebreerna, om hwar släkts måtteliga och ewiga jordstycke 3. Mos. B. 25:13 – 16. 23. 24. 40. 41. eller Licinii hos Romarena om 500 *jugera* (257 1/7 Tunnland) tjäna derföre ganska mycket både att befordra landets skötsel, och att jämka inwånarens rättigheter.

§ 16.

Ingenting är mera egit, än våra *kroppps och sinnes krafter*; ingenting derföre billigare, än att dermed få föda sig på anständigt sätt, få utöfwa nyttiga konster och wetenskaper. Att fritt näras af Landt- och Bruks-lefnad, af Handtwerk, af köpenskap, af witterhet, bör altså stå öppet för alla, till dess mängden blir samhället skadelig.

§ 17.

Från *Landet* jagas nyttiga arbetare, då lagar ej låta dem, hwilka lyckan ej tilldelt något landstycke, i byar och backstufwor njuta skydd af annat, än lyten och ålderdom, som gör dem nästan orkeslösa. Ty så snart de wilja följa den så naturliga driften till frihet och blifwa sina egna, måste de fly till städerna, der de lätt få lefwa efter godtycko, eller tjäna med maklighet. Men der efter Englands och Tysklands sed hwar och en på landet äfwen kan wara herre i sin hydda, der blifwa många arbetare qwar i sin fädernesbygd, föröka sin släkt, företaga sig nyttiga näringar, låta leja sig till jordbrukares hielp, och det allt mycket hällre, än att de genom wal af stadslefnaden skulle blifwa ogifta, öfwerdådiga, lättjefulla, för att underhålla de rikas öfwerflöd, omgifwa förnäma wagnar, döda tiden med sömn och liderlighet, och wara till last för sig och för sitt fädernesland.

§ 18.

Till *konsters* upphjelpande och frihet skulle i synnerhet publika skolor tjäna, der man finge så fort som ens egen flit och begrep hunne, blifwa fullärd i alla slags wetenskaper och handtwerk, samt lika snart erkänd

för frimästare i den sak man förstode. Men antalet af hwart slags idkare borde utsättas efter samhällets behof och nytta.

§ 19.

Deremot äro våra slutna *Skrån*, och lärgossarnas inrättning, stora medel att underhålla lättja, twång, folkbrist, liderlighet, fattigdom och tidspillan.

§ 20.

Sjelfwa de så kallade *fria konster*, äro i Sverige intet fria. Annorstädes göra de mera skäl för namnet. I Tyskland får hwar och en offenteligen lära andra, allt hwad han sjelf inhämtat. Man borde ock antingen straxt hindras ifrån att göra bokwett till sin hufwudsak, eller ock sedan ej hindras att i frihet lefwa af den oskyldigaste näring.

§ 21.

Ändteligen är ock det en wigtig rättighet i ett fritt samhälle, att *fritt få bidraga till det allmännas wäl*. Men skal det ske, så måste samhällets tillstånd kunna blifwa bekant för hwar och en, och hwar en fritt derom få yttra sina tankar. Der det saknas är friheten ej wärd sitt namn. Krigssaker, och somliga utländska underhandlingar, behöfwa till en tid döljas, och ej komma till mångas wetskap, men ej för rätta medborgares, utan för fiendernas skull. Mycket mindre böra fridssaker, och hwad som angår inwärtas wälfärden, dragas undan inwånarens ögon. Annars händer lätt, att endast utländningar, som wilja skada, utforska alla hemligheter genom Sändebud och penningar, men sjelfwa landets folk, som böra gifwa tjänliga råd, äro okunniga om det mästa. Deremot, då hela landet är känt, se åtminstone de uppmärksamma, hwad som gagnar eller skadar, och upptäcka det för alla, der skriffrihet är. Då först kunna allmänna rådslag, styras af sanning och kärlek till fäderneslandet, på hwilkets gemensamma wäl alla enskildtas beror.

Gud den allrahögsta, som wårdar menniskjors sällhet, föröke vår Swenska Frihet, och beware den till ewärdeliga tider!

In 2016, the world commemorated the sestercentennial adoption of *His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press*. The passage of the *Ordinance* in 1766 in Sweden – which at the time comprised today's Sweden and Finland – was preceded by intense political and scholarly debate. Peter Forsskål put himself at the centre of that debate, when he in 1759 published the pamphlet *Thoughts on Civil Liberty*, consisting of 21 paragraphs setting out his thoughts advocating against oppression and tyranny and championing civil rights for everyone.

Historical perspectives are fruitful in many respects, and this is why Forsskål's words still resonate. But we must be careful not to use the tracks of history to create myths about today – instead anniversaries like the one concerning the *Ordinance* can be used as a starting point for debate – to discuss our history and where we stand now in terms of freedom of expression, the right to information and freedom of the press.

It was against such a backdrop that a seminar was organized as a side event, part of UNESCO's World Press Freedom Day in Helsinki, 3 May 2016, and co-organized by the National Archives of Finland, Project Forsskal and the UNESCO Chair on Freedom of Expression, Media Development and Global Policy at the University of Gothenburg. This publication is based on that seminar.



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UNESCO Chair on Freedom of Expression,
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