

The Swedish Freedom of Print Act of 1776 – Background and Significance

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The first Swedish Freedom of Print Act was adopted on 2 December 1766. Thus, it celebrated its 250th anniversary in 2016.¹ It was the first legislation in the world with clearly determined limits for the freedom of print. Its contemporary importance is illustrated by the fact that it was promulgated as a constitutional law.

The Swedish Freedom of Print Act contained fifteen paragraphs outlining the extent and limits to the press in detail.² The law was formulated according to an exclusivity principle: only those offenses that were clearly specified in the law could be indicted. If a topic was not explicitly excluded it could be freely discussed in print without fear of reprisal.

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1. In 2016 the Swedish Parliament (Sveriges Riksdag) published an extensive scholarly volume relating to the anniversary. Twenty-two experts treat the story of freedom of print in Sweden from 1766–2016 in various historical, legal, and cultural viewpoints. An English translation is due to be published in 2017: PRESS FREEDOM 250 YEARS. FREEDOM OF THE PRESS AND PUBLIC ACCESS TO OFFICIAL DOCUMENTS IN SWEDEN AND FINLAND – A LIVING HERITAGE FROM 1766.

2. The Ordinance exists in two expert translations, one by Peter Hogg, another by Ian Giles and Peter Graves. They vary in their approach. Whereas Hogg has strived for a verbatim translation in keeping with the eighteenth-century original text, Giles & Graves has endeavored a "cultural" approach aiming at making the content of the Ordinance more comprehensible to modern readers. See *His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press* (1766) (Peter Hogg trans. 2006), in *THE WORLD'S FIRST FREEDOM OF INFORMATION ACT: ANDERS CHYDENIUS' LEGACY TODAY* 8-17 (Juha Mustonen ed. 2006), http://www.chydenius.net/pdf/worlds_first_foia.pdf; and *HIS MAJESTY'S GRACIOUS ORDINANCE REGARDING THE FREEDOM OF WRITING AND OF THE PRESS* (Ian Giles & Peter Graves trans. 2016), <http://www.peterforsskal.info/documents/1766-translation.pdf>.

The exceptions in the law were four (§§1–3). Everything was allowed to print, except for: challenges to the Evangelical faith; attacks on the constitution, the royal family or foreign powers; defamatory remarks about civil servants or fellow citizens; and indecent or obscene literature.

These qualifications might seem far-reaching, but except for religious matters the very same limitations, translated into twentieth-century language, are in fact accepted in the European Convention on Human Rights, adopted in 1950.³ An important provision for all limitations to free speech is that they are clearly defined in law, just like in the Swedish Freedom of Print Act.

However, the freedom to print was not the most remarkable feature of the 1766 law. In the eighteenth century there was a fairly extensive de facto freedom of print recognized in, for example, Great Britain and the Netherlands, although in neither of these countries was it protected by law, and book printers still operated under arbitrary conditions.⁴ What was truly unique with the Swedish law was the extensive public access it gave to official documents. It was a Freedom of Information Act as much as it was a Freedom of Print Act. Indeed, many scholars – including myself – hold that the public access to official records was the main purpose of the law. The chief objective with the ordinance was to vitalize political discussions. To achieve this objective, it was essential that the citizens had access to official documents in order to see how the state was run.

Seven of the ordinance's fifteen paragraphs were dedicated to outlining in detail the extent of this public access (§§5–11). In short, access was granted to all documents and proceedings from the courts, public authorities, and the Diet (the Swedish Parliament). As a rule, negotiations with foreign powers should also be open to public scrutiny. Exemptions were made for records that needed to be kept secret (especially in foreign affairs), and working papers from deliberations still in progress. Since 1766 public access has been the norm, while secrecy is the exception. All citizens were allowed to access and copy official documents at cost price, and without having to state the purpose of doing so. Public documents were also free to print without limitations.

Public access was not total, however, and the limits were somewhat undefined. Most importantly, the ordinance does not mention minutes from the Council of the Realm (the government) or the Justice Revision (a

3. *Convention for the Protection of Human Rights and Fundamental Freedoms*, EUROPEAN CONVENTION ON HUMAN RIGHTS (Nov. 4, 1950), Article 10(2), http://www.echr.coe.int/Documents/Convention_ENG.pdf.

4. FREDERICK SEATON SIEBERT, *FREEDOM OF THE PRESS IN ENGLAND 1476–1776: THE RISE AND DECLINE OF GOVERNMENT CONTROL*, chs. 15-18 (1965); RIETJE VAN VLIET, *ELIE LUZAC (1721–1796): BOOKSELLER OF THE ENLIGHTENMENT*, ch. 5 (2009).

division of the Council of the Realm acting as Supreme Court). In both instances, the ordinance only mentions the members' "votes", which would include any reservations to the majority vote expressed in the minutes, but it is not clear whether this would also include verbatim accounts from the proceedings. It is a fact, however, that minutes from both the government and the Supreme Court were published quite regularly in the years that followed, so obviously the authorities chose to interpret the regulations liberally.⁵

In spite of this ambiguity, it is clear that the public access to official documents became more extensive than in any other European country at the time. It should be remembered that only from 1771, at the earliest, was it possible to publish accounts of the debates in the British parliament, and this was not expressly permitted by law, but only tolerated for practical reasons.⁶

CONVENTIONAL IDEAS IN AN UNCONVENTIONAL POLITICAL SETTING

What caused the exceptional and early Swedish legislation on this matter? An explanation has to take both intellectual and institutional circumstances into account.

On the intellectual side Sweden experienced the same transformation that affected the mental climate all over the Western World in the eighteenth century. It was the birth of liberal theory, which is the one true paradigm shift in European society since Antiquity. It can be summarized in three opposing pairs:

- Whereas pre-modern society rested on a divine order, liberal theory is profoundly secular.
- Whereas pre-modern society was altogether socio-centric, liberal theory regards the individual as the essential component to society.
- Whereas pre-modern society strived to accomplish the stability that was imminent in the perfect divine order, liberal theory considers perpetual change to be a natural consequence of humanity's aspiration for constant betterment of society.

Few, if any, Swedish politicians from the period are counted among the vanguard of European intellectuals, but they adopted and responded to the same ideas as the rest of the Western World. Yet, in one important respect,

5. JOHAN HIRSCHFELDT, 1766 ÅRS TRYCKFRIHETSFÖRORDNING OCH OFFENTLIGHETSPRINCIPENS UTVECKLING, 1-28 (Dec. 2, 1996), <https://johanhirschfeldt.files.wordpress.com/2008/12/1766tf.pdf>.

6. PETER THOMAS, JOHN WILKES, A FRIEND TO LIBERTY, ch. 8 (1996); ARTHUR CASH, JOHN WILKES. THE SCANDALOUS FATHER OF CIVIL LIBERTY, 277-78 and 286-87 (2006).

Swedish politicians had an advantage compared to their colleagues elsewhere in Europe. During the eighteenth century Sweden had a peculiar political system that made it possible to actually put many of the radical ideas *en vogue* into practice.

Between the death of the absolute King Charles XII in 1718 and the coup d'état of King Gustav III in 1772, supreme power in Sweden was exercised by the Diet, which was composed of four estates: the nobility, the clergy, the burghers, and the peasantry. Political discussion took place within the four estates, but also within two competing parties: the Hats and the Caps. Roughly sixty percent of the adult male population was allowed to participate, directly or indirectly, in the elections to the Diet, which made it by far the most widely participatory political system anywhere in Europe. Executive power was exercised by the Council of the Realm, which had to answer to the Diet, whereas the king was reduced to a mere figurehead, whose personal signature was occasionally replaced by a dry stamp. This era was referred to as the Age of Liberty – *frihetstiden* – even by contemporaries.⁷

It is true that the same grand ideas will not be found among Swedish eighteenth-century intellectuals as among the French. Where French philosophers had to argue on a general level because their influence on actual politics were virtually non-existent, Swedish authors could actually put their ideas into practice through the Diet. Swedish authors did not write any eloquent *Traité sur la tolérance* that people still read today, but they did formulate detailed ordinances on freedom of print and on freedom of information, whose core values have transcended down through the centuries. Even though minute legislative regulations rarely display literary qualities they may nevertheless contain radical ideas and be pioneers for change. The Freedom of Print Act achieved the immediate result that was intended, and the political climate severely intensified. About 75 percent of the Swedish political pamphlets from the eighteenth century were printed in the years 1766–1772, and there was at least a twelvefold increase in annual production compared to the immediately preceding years.⁸

Not only were the political discussions considerably invigorated by the freedom of print, they were also radicalized. Most important was the increased emphasis on civil rights, including freedom of trade and equality before the law. The aristocracy came under fierce attack and the noble

7. See MICHAEL ROBERTS, *THE AGE OF LIBERTY: SWEDEN 1719–1772* (1986); Michael F. Metcalf, *Parliamentary Sovereignty and Royal Reaction, 1719–1809*, in *THE RIKSDAG: A HISTORY OF THE SWEDISH PARLIAMENT* (1987).

8. There are no proper statistic computations of print output in these years. These figures are an estimate based on the number of archive capsules under the subject headings “Politics” and “Political Economy” at the National Library of Sweden. See also STIG BOBERG, *GUSTAV III OCH TRYCKFRIHETEN 1774–1787*, 79 (1951).

privileges were all but abolished in a few years' time. Several bills for equal civil rights for all citizens were drafted. The first was presented to the Diet in 1770 by Alexander Kepplerus, representative of the town Lovisa in Finland. The noble privileges were placed on a level with constitutional law and could therefore not be altered without the consent of the nobility. The solution found by the commoners was to make them redundant by extending them to all citizens – a privilege pertaining to everyone is no longer a privilege, but rather a general law. Kepplerus, therefore, wanted the clergy, the burghers, and the peasantry to be able to enjoy, on equal footing with the nobility, the rights and liberties which had “always belonged to Swedish men and inhabitants of the realm as freeborn from time immemorial.”⁹ His draft affirmed that:

all non-nobles, regardless of status, age and sex, will be under the protection of the law and not by other subjects or any one private person, and they should be free from all force regarding their persons, their business, and their property, so that each and every one, by consent and free will, may enjoy the liberty of himself and his person, as far as the written constitution of Sweden permits.¹⁰

This proposition was presented to the Diet by a representative of the Burghers, but it was soon adopted and adapted by the peasantry as well.¹¹ In February 1771 the impotent King Adolf Fredrik died and was succeeded by his son, Gustav III, who was determined to restore the monarch's power. For half a century the nobility had been the monarchy's strongest adversaries, but their urge to protect their social and economic prerogatives made them shift alliance and side with the king. This was a necessary condition for the success of the coup d'état, staged by Gustav III in August 1772. In one blow the noble privileges were restored and all constitutional laws that had been adopted since 1680 were abolished, among them the Freedom of Print Act.

THE FREEDOM OF PRINT IS RESTRICTED BY THE KING

The freedom of expression was immediately curbed, more through authors' caution and self-censorship, it seems, than through actual coercion

9. ALEXANDER KEPPLERUS, BORGMÄSTARENS OCH RIKSDAGS-FULLMÄGTIGENS IFRÅN LOVISA STAD, HERR A. KEPPLERI MEMORIAL, RÖRANDE PRIVILEGIER FÖR BORGARE- OCH BONDE-STÄNDEN, §§1 and 3 (1770). I have elaborated extensively on this proposition and its context in Jonas Nordin, *Ett fattigt men fritt folk. nationell och politisk självbild i Sverige från sen stormaktstid till slutet av 1700-talet* (A People of Poverty and Liberty: National and Political Self-image in Sweden from the Late Age of Greatness to the End of the Age of Liberty (c.1660-1770)), 396 (Bokförlag Symposion, 2000).

10. *Id.*

11. Nordin, *supra* note 9, at 401–08.

exercised by the authorities. To codify a *fait accompli* the abrogated Freedom of Print Act was replaced in early 1774 by a new print ordinance, which was an edited version of the former one.¹² Gustav III had sensed the popularity of the former print ordinance and wanted to appear as an enlightened and benevolent ruler, or as “the first citizen among a free people,” as he styled himself in his opening address to the Diet in 1771. Through small, barely discernible changes he completely reversed the essence of the ordinance. Earlier everything was allowed to be printed if it was not expressly forbidden, but with Gustav III’s new law anything that was not expressly allowed to be printed ran a potential risk of being brought to court. The law continued to allow a basic public access to official documents, but all government records were exempted. This did not prevent the king from boasting about the Swedish freedom of print in a draft letter to Voltaire:

Vous trouverez sans doute dans cet édit que la liberté de la presse est plus étendue en Suède que dans aucun pays, même en Angleterre, puisque les registres du conseil d’État, que nous appelons la revision de la Justice, sont permis d’imprimer.

(In this ordinance you will without doubt find that the liberty of the press is far more extensive in Sweden than in any other country, including England, because here even the proceedings of the State Council – which we call the Justice Revision – are allowed to be printed.)¹³

This was a deliberate attempt at deception because Voltaire probably had no knowledge of the former, liberal ordinance. However, there is no proof that this letter was ever sent – perhaps the royal lawmaker became aware of his own impudence. Gustav III was no tyrant, but saw himself as a progressive monarch with humane ideals. Nevertheless, no matter how benevolent a ruler, autocracy has, throughout history, proven itself to be profoundly incompatible to civic liberty. Certainly it was during his reign that the minutes of the Diet began to be published, but this was in spite of, not thanks to, royal politics.¹⁴

Gustav III was assassinated in an aristocratic conspiracy in 1792. A renewed Freedom of Print Act was issued soon after, but in contrast to former ordinances it was a declaration of principles rather than a proper law. Its force was soon reduced by the new king, Gustav IV Adolf, who

12. Henrik Fogut, Kongl. Maj:ts Nådiga förnyade förordning och påbud angående skrif- och tryck-friheten. Gifven Stockholms slott, then 26 apr. 1774 (1774), <http://weburn.kb.se/eod/6660/NLS12A006660.pdf> (last visited Dec. 5, 2017).

13. *Gustave III par ses lettres*, Gustav III to Voltaire, undated (spring 1774) draft, 151 (Gunnar von Proschwitz ed. 1986).

14. The Nobility, Burghers, and Peasantry began printing their minutes from 1786, whereas the Clergy delayed until 1810, when it became mandatory.

was inclined to autocracy and was dethroned and expatriated in 1809. Proper freedom of print was once again introduced and the access to public documents was extended to its former range. A new Freedom of Print Act was issued in 1810 and revised in 1812. This was to be in force, with consecutive amendments, until 1949, when the present Freedom of Print Act was adopted. Even if there have been ups and downs during these years the right to public access has formed an integral part of state administration in Sweden from 1809, and it has been vital in shaping a culture of rational bureaucracy with a low degree of corruption and a high degree of public trust.¹⁵

Swedish citizens' trust in fellowmen as well as in public administration and government services tend to stand out in international comparisons.¹⁶ It is a sociological fact that is frequently dismissed as naïve, or even ridiculed among observers from countries where state bureaucracy is more often regarded to be in opposition rather than in line with the interest of the people. However, this high level of trust in Swedish authorities has developed through many generations and it is a result of actual experience. Today, there are signs that this public trust is diminishing and Sweden is becoming more and more like other European countries.¹⁷

THE CONTINUING LEGACY FROM 1766

To conclude, I would like to point at some elements where the 1766 print ordinance still makes a mark in Swedish legislation; many of these elements are also peculiar to the way freedom of expression are regularized in Sweden.

First, there is the fact that freedom of print is still minutely regulated in a separate constitutional law.¹⁸ There are four constitutional laws in Sweden of which one regulates freedom of print and another regulates freedom of expression in audiovisual and digital media (the other two constitutional laws are the Instrument of Government and the Order of Succession, since nominally Sweden is still a monarchy).¹⁹

15. HIRSCHFELDT, *supra* note 5.

16. See Richard Wike & Kathleen Holzward, *Where Trust is High, Crime and Corruption are Low*, PEW RESEARCH CENTER (Apr. 15, 2008), <http://www.pewglobal.org/2008/04/15/where-trust-is-high-crime-and-corruption-are-low/>.

17. Susanne Wallman Lundåsen & Dag Wollebæk, *Diversity and Community Trust in Swedish Local Communities*, 23 J. OF ELECTIONS, PUB. OPINIONS AND PARTIES 3 (2013).

18. *Tryckfrihetsförordningen, Svensk författningssamling 1949* (The Freedom of the Press Act, 1949) (Sweden), <http://www.riksdagen.se/globalassets/07.-dokument--lagar/the-freedom-of-the-press-act-2015.pdf> (last visited Dec. 5, 2017).

19. *Yttrandefrihetsgrundlagen, Svensk författningssamling 1991:1469* (The Fundamental Law on Freedom of Expression, 1991) (Sweden), <http://www.riksdagen.se/globalassets/07.->

Secondly, the principle of public access to official records is still inscribed in the Freedom of Print Act. Exemptions from publicity can only be made on grounds that are stated in this constitutional law, and this exclusivity principle also survives from 1766. Another such remnant is the single responsibility. In violations against the freedom-of-print laws, only one person can be held accountable: either the author or the publisher. To acquire the protection that the constitution provides, a periodical publication must have a legally responsible publisher, an idea that was implied although not fully realized already in 1766. This construct – which I believe is rather unique for Sweden – means, for example, that a journalist cannot be prosecuted for anything he has written in a newspaper. Only one person can be held liable for the newspaper's content, and that is the responsible publisher.

If a publisher is convicted – a rare occurrence – it is normally not for what he has published, but because he has revealed a source. The most original idea introduced in Swedish print legislation since 1766 is the principle that public access to official documents makes it legal for state employees to reveal irregularities in the public sector to journalists, even if this involves the disclosure of classified information. The authorities are prohibited to search for the identity of the informant, and journalists are forbidden to reveal their source. Whistleblowers enjoy constitutional protection even when revealing state secrets. The fact that it is illegal to try to uncover whistleblowers' identities is often one of the hardest things for Swedish lawyers to explain when talking to foreign colleagues about Swedish FOI legislation.