Freedom of Expression in the Nordic Countries 1815–1914 Theory and Practice

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Abstract
The Nordic countries have traditionally been regarded as pioneers in the historical development of the freedom of expression. In 2016, Sweden and Finland celebrated the 250th anniversary of the world's first freedom of the press act, passed in 1766. Even later on, the history of freedom of expression remained primarily synonymous with that of freedom of the press. The Danish autocracy's regulation on the boundaries of press freedom in 1799 restricted the previously tolerated freedom of the press but was based on the idea of the rule of law and on two principles, namely the absence of advance censorship and the right of the author and publisher to have their case tried before a court. These principles were repeated in the Swedish Instrument of Government of 1809, the Norwegian Constitution of 1814 and the Danish Constitution of 1849. Even the Grand Duchy of Finland, which was in Russia's possession, received its own constitutional statute concerning the freedom of expression in 1906. In reality, however, freedom of expression was often under threat as all those in power were opposed to the right of the opposition to express themselves. Judicial control therefore acted as an important protection for the freedom of expression, but even this shield had its limits depending on the political views of the judges.

Keywords
freedom of expression, freedom of the press, prohibition of censorship, legal rights

Introduction

The Nordic countries have long been considered as a region with widespread freedom of expression and of the press. The *World Press Freedom Index* published by *Reporters without Borders* in 2018 ranks Norway and Sweden in first and second place respectively, Finland in fourth, Denmark in ninth and Iceland in thirteenth. Furthermore, the Nordic countries have traditionally been regarded as pioneers in the historical development of the freedom of expression. Three years ago, both Sweden and Finland celebrated the 250th anniversary of the world's first freedom of the press act, passed in 1766. However, the legislation retained the censorship of imported foreign literature and theological texts, and all criticism of existing constitutional laws was prohibited upon pain of costly fines. Repealed in 1774, this legislation did not enjoy a long life. In this overview of the legal history of Nordic freedom of expression in the period 1815–1914, I deal partly with the laws and regulations that governed the freedom of expression, partly with the interpretations of these in legal scholarship, and partly with the political reality in the form of the administrative authorities' actions and case law, which often differed significantly from the theory set out in the legislation. This presentation is drawn from my book on Nordic freedom of expression (Björne 2018).

For a long time, the history of freedom of expression was synonymous with that of the freedom of the press. As early as the eighteenth century, people were pleading for press freedom, primarily on the grounds of its usefulness: namely, the opportunity for the ruling classes to obtain knowledge about the unsatisfactory state of affairs in wider society through educated, experienced men outlining their thoughts on the problems and shortcomings of society. This approach was entirely in accordance with the hierarchical structure of the class-based society of the time. The peasantry were able to raise complaints directly with their ruler, but had no opportunity to initiate a public debate, nor was this considered desirable. The Freedom of the Press Act of 1766 in Sweden had been declared a constitutional law. However, it was the new concept of constitution that emerged in the United States and following the French Revolution that came to influence

Nordic constitutional laws to varying degrees during the early part of the nineteenth century. The Swedish Instrument of Government (RF) of 1809, the Norwegian Constitution passed at Eidsvoll in 1814 and the first Danish Constitution of 1849 all included lists of civil liberties, human rights for all citizens, which included the freedom of the press. All three constitutions explicitly provided for freedom of the press, while there was no mention of any general freedom of expression. The autonomous Grand Duchy of Finland, which had belonged to the Russian Empire since 1809, was an exception in this regard. It had no recognised constitution and no case law, instead a large proportion of statements of opinion were stopped by censorship and infringements of legal restrictions were prosecuted by administrative means.

The three Scandinavian constitutions from the first half of the nineteenth century defined freedom of the press as a right, but the content and boundaries of that right were defined differently in the respective laws. However, there were two principles that were consistent. Firstly, all forms of censorship were prohibited (Section 86 of RF; Section 91 of the Danish Constitution). Section 100 of the Norwegian Constitution alone lacked an express prohibition of censorship, but the opening words of the paragraph reading 'Trykkefrihed bør finde Sted' (Freedom of the press shall exist) were interpreted as such. A second common feature was what has been referred to as the *court ideology*, specifically the right of each and every author and publisher to have their case tried before a court. In relation to the question of which statements were prohibited, RF noted that the punishable content had to be 'emot tydlig lag' (against clear law). The Norwegian Constitution included a list that can be interpreted as a brief summary of the Danish autocracy's Press Freedom Regulation of 27/09/1799, while the Danish Constitution was completely silent on the issue. According to Section 85 of RF, a future freedom of the press act was declared a constitutional law that required a more difficult legislative procedure, while the Norwegian Constitution was interpreted to allow for infringements of legal restrictions to be included in the ordinary criminal code. In Denmark, restrictions on the freedom of the press could also be imposed by means of ordinary law (Krabbe 1939: 18, 23). It is also the rule in the Nordic region that freedom of expression

is the child of revolutions and other unrest: in Sweden in 1809, in Norway in 1814, in Denmark in 1849 and finally in Finland in 1906, where the then-enacted constitutional law on issues included the freedom of expression, it remained, however, solely a declaration of principle. However, 'the revolution devours its own children' and once the new power base stabilises, the interest in freedom of expression cools. During the nineteenth century, especially during its second half, legislation relating to freedom of the press was made more stringent, particularly in Sweden and Denmark. More importantly, however, administrative and case law were drawing up closer limits to the freedom of press and expression.

In the Nordic history of freedom of expression, the 1850s represents a period of transition. The revolutionary year of 1848 influenced press freedom throughout Europe, often negatively as various freedom movements were rapidly struck down. Alongside France, Denmark was the only country where the turmoil of the revolutionary year led to lasting change in terms of constitutional law, and the Danish Constitution of 1849 included a guarantee of freedom of the press, although only through the prohibition of censorship. The revolutionary wave did not have an impact on the other Nordic countries, with the exception that it caused a high degree of concern amongst the authorities regarding various political movements that were striving for social change, resulting in a tightening of attitudes towards freedom of the press and of expression. In Finland, censorship was tightened up to such an extent that practically all literature in Finnish, the main language of the country, was banned (Kalleinen 1994: 202–205). In Norway, a new era dawned when the authorities struck hard against the labour movement led by Marcus Thrane, the Thranites, and the movement's leaders received long prison sentences as a result of convictions for a range of things, including their own statements (Ringvej 2014). In Sweden, King Oscar I and the government attempted, as late as the parliamentary session of 1853–1854, to get the 1812 Freedom of the Press Ordinance, which was classified as constitutional law, downgraded to a normal law in order to amend it more easily (Rydin 1859: 199).

While the downfall of various revolutions and freedom movements was the final trial of strength for the Restoration and the Holy Alliance, the crushing of the Thranite movement in Norway in 1851 was, as mentioned, the first sign of a new era that endured until the outbreak of the First World War. During this period, the freedom of the press was not under any threat in the Nordic countries as such – with the exception once again of Finland – but it was often restricted. At the beginning of that period, democracy and parliamentarianism belonged to the future and leading political circles on the right were unified by their fear of socialism and of the emerging labour movement.

The Early Nineteenth Century

The Napoleonic Wars led to the disintegration of two Nordic kingdoms: Denmark-Norway and Sweden (including Finland) both fell apart. By 1815, Sweden, Norway, Denmark and Finland were brand new states. In 1809, Sweden lost Finland to Russia. However, Sweden's newly-elected Crown Prince, who was crowned King Karl XIV Johan in 1818, sought out consensus with Russia, whose involvement saw the transfer of Norway from the Danish king to the Swedish as a result of the Treaty of Kiel in 1814. The Norwegians, who had not been consulted, called a national assembly, declared Norway independent and approved a new constitution. Following a short period of war, the Norwegians were forced to accept a union with Sweden, but the union was a loose, personal union and Sweden and Norway remained independent states with their own constitutions.

Once freedom of the press had been introduced into the Swedish Instrument of Government, the Norwegian Constitution of 1814 and the Danish Constitution of 1849, the Scandinavian countries became European pioneers in the area of freedom of expression. The declarations of principles in the constitutions were generally accepted and easy to implement, but it also transpired in this case that the devil was in the detail!

One example is the fate of the Danish Press Freedom Regulation. When it was introduced in 1799, it was regarded by contemporary observers as a powerful restriction of the previously tolerated freedom

of the press, and following further tightening of the rules freedom of the press was, in practice, curtailed even further (Jørgensen 1944). It might therefore have been expected that upon the abolition of absolutism in Norway in 1814 and in Denmark in 1848, one of the first initiatives would have been the complete removal of the regulation. In the event, this was not the case. Despite the guarantee of freedom of the press in Section 100 of the Norwegian Constitution of 1814, there remained an acceptance in Norway that the Danish Press Freedom Regulation was still largely valid (Langeland 2005: 195). After the fall of autocracy in Denmark in March 1848, the work of expanding the freedom of the press went on, but only through the abolition of the previous restrictions, while the Danish Press Freedom Regulation remained valid law, with the exception of the rules on censorship, until 1851.

Even after the repeal of the Danish Press Freedom Regulation in Denmark and (for the most part) Norway, it exerted influence on the design of later legislation. The prohibition in the Norwegian Criminal Code of 1842 and the Danish Press Act of 1851 on insulting foreign sovereigns and governments was more or less a word-for-word repetition of Section 8 in the Danish Press Freedom Regulation. The Danish Press Freedom Regulation's catalogue of prohibitions also had major similarities to the corresponding list in the Swedish Freedom of the Press Act from 1812 (Björne 2018: 38). In the history of Nordic freedom of expression and of the press, the Danish Press Freedom Regulation of 1799 is by far the most important law, and its reverberations could still be felt in the early years of the twentieth century.

Despite the fact that the principle of legalism in criminal law, *nulla poena sine lege* (no punishment without law), became widely known during the period, its application throughout the Nordic region encountered difficulties as the laws were so outdated that their literal interpretation was impossible. With regard to infringements of legal restrictions, however, it was not the outdated legislation but the ambiguity of the concepts used that caused difficulties. In general criminal law, there was largely agreement on the punishment of certain deeds, such as murder, manslaughter, theft, fraud, etc., as well as the

definitions of these concepts. Justice was juxtaposed against injustice. On the other hand, freedom of expression was a matter of justice against justice – society's need for stability against citizens' rights to exercise their freedom of expression. What the administration as embodied by the prosecution authorities deemed to be contempt, scorn and ridicule, were often considered by the accused and their sympathisers to be permitted, bold statements on the unsatisfactory state of affairs in society. As the *court ideology* was prevalent, the decision was left to the court, and ultimately the judges' personal views. This meant that the courts could always be blamed for political bias, favouring either the government or the opposition.

The role of jurisprudence as an authority in the matter of the freedom of the press appears to have been insignificant. However, the big authority in the legal field in Denmark, and specifically in relation to press freedom, was Anders Sandøe Ørsted (1778–1860). His book published in 1801 on the interpretation of the Danish Press Freedom Regulation demonstrated that it was possible to live freely, write and even publish political texts despite the regulation. It has been claimed that Ørsted's work later influenced case law (Jørgensen 1944: 44), but it is challenging to determine whether this is the case, given that in later years Ørsted had at least as much influence in his role as a judge and a senior official. Other legal specialists had to take into account their future careers or their positions as educators in the country's only faculty of law. It was only in the 1840s that Danish legal experts were able to make themselves heard, not least through the people's assemblies.

The new and major problem faced by the authorities dealing with censorship provisions and press freedom was the emerging newspaper press in the aftermath of the Napoleonic Wars. Newspapers were beginning to show a new self-awareness and they increasingly began to include a greater number of debate articles and opinions. In the 'backward' Grand Duchy of Finland, there was a lively but short-lived newspaper press to be found in the former capital of Turku in the early 1820s (Knif 2016: 226).

Even at the beginning of the period, the *court ideology* had become prevalent in Sweden, Norway and Denmark, although not entirely

without exceptions. The most familiar exception is the 'power of withdrawal' in Sweden in the period from 1812 to 1845, when the government had the ability to ban a newspaper or periodical without the publisher having any opportunity to appeal the decision in a court. In Denmark, the Danish Chancellery began to withdraw non-privileged newspapers from 1836 without granting publishers the opportunity to appeal to the courts.

When considering case law from the first half of the nineteenth century, the courts of Denmark and Norway appear to be guarantors of the freedom of the press: the *court ideology* played an important role in practice. The Danish Supreme Court, and to an even greater extent the lower courts, often rejected prosecution cases brought by the administration – frequently on the personal orders of the King – and absolutist Denmark showed its strength in this regard as a country governed by the rule of law, as even its sovereigns acceded to the courts' decisions. The Supreme Court of Norway during the first decades of the union was 'patriotic' (Langeland 2005: 185), and acted with reference to Section 100 of the Constitution to limit the application of the 1799 regulation. In both cases it may be assumed that a critical attitude towards power and the administration underpinned the judges' broad-mindedness. The legitimacy of the latter stages of absolutism in Denmark, with its reactionary rulers, increasingly came under question, ultimately demonstrated by means of the peaceful and generally accepted transition to a constitutional monarchy in 1848. In Norway, Karl Johan – who was no friend to freedom of expression either in Sweden or Norway – remained a foreign conqueror, who was largely only able to procure followers through bribery and by other similar means.

Section 100 of the Norwegian Constitution of 1814 prohibited displays of contempt towards 'Religionen, Sædelighed eller de constitutionella Magter' (Religion, Morality or Constitutional Powers), as well as defamation. In a nutshell, the statute contained restrictions on the freedom of the press and of expression in Nordic legislation, with the exception of protection for friendly foreign powers. However, according to Section 100, each and every person was entitled to make 'Frimodige Yttringer om Statsstyrelsen og hvilkensomhelst anden

Gjenstand' (Bold statements relating to the government and any other object). In case law, religion and morality came to lack greater significance, while the protection for the constitutional powers, i.e. the sovereign's and the government's protection from opposition criticism, was clearly the most important statute. Freedom of expression was, of course, meaningless if it did not permit criticism of those in power and their actions, but where was the line to be drawn?

The Danish Press Freedom Regulation attempted to define the boundaries of political criticism. This dilemma was expressed in the form of Sections 2 and 7 of the regulation. According to Section 2, the crime of blaming or mocking the constitution or government in general or 'i enkelte Handlinger' (in individual matters) was punishable by lifelong exile, while Section 7 permitted the public presentation of bold thoughts on what might be improved in the actions of the government or its laws on the condition that this occurred 'med Beskedenhed' (with modesty). In other words, it concerned the key question of *whether* and *to what extent* political criticism was permitted at all. In his commentary on the Danish Press Freedom Regulation, young Ørsted drew a distinction that came to have significance in case law.

Ørsted believed without doubt that one was entitled to *publicly* criticise the government's actions and the unsatisfactory state of affairs in society, and that this freedom was, amongst other things, 'en uomgjængelig Betingelse for Videnskabernes Fremvext' (an indispensable condition of the growth of sciences). The ability to turn directly to the government with suggestions for improvements was insufficient, as there also needed to be a public debate about the proposals. The delineation between Sections 2 and 7 was therefore of crucial importance.

Ørsted was of the view that Section 2, which referred to 'laste Regjeringen i enkelte Handlinger' (blaming the government in relation to specific matters), related to individual issues that were presented in such a way that the entire government was characterised as incompetent. On the other hand, criticism of individual actions and decisions was permitted (Ørsted 1801: 124–130). It was this distinction that gained traction in case law, and in reality enabled rather extensive

criticism of the government's and authorities' actions in Denmark during the final stages of absolutism.

Most press freedom cases in Denmark prior to 1848 concerned newspaper articles in which the government was blamed, and thereby indirectly the King, for its actions and in which legislation, especially press freedom provisions, was criticised, although never the constitution directly. The proportion of acquittals in press freedom cases was high, especially in the lower courts during the final decades of autocracy (almost 40% in the Supreme Court), and even those sentences that were passed were lenient, generally taking the form of fines (Jørgensen 1944: 341–436).

In principle, some criticism of the government and its actions was already permitted in Denmark, Norway and Sweden during the first half of the nineteenth century, but the statutes outlined do not represent the whole truth. At the turn of the nineteenth century in Denmark and Norway, *lèse-majesté*, a verbal attack on the King, was punishable by law in the form of exile for a period of three to ten years or for life, while the 1812 Freedom of the Press Ordinance in Sweden and Section 5:1 of the Misconduct Code of 1734 specified the punishment of beheading. In practice, judgements would be converted by means of a pardon to a prison sentence of some years. Even the modern criminal laws, in the shape of Norway's 1842 Criminal Code and 1902 Penal Code, Denmark's 1866 Penal Code, Sweden's 1864 Penal Code and the equivalent in Finland in 1889, all levied harsh punishments for lèse-majesté, generally up to several years of imprisonment. These punishments were substantially harsher than in the statutes concerning other crimes related to the freedom of the press and of expression.

The problem was that due to the monarchical form of government, the government's laws, propositions and decisions were issued in the name of the King, which meant that all criticism of the government's actions could effectively lead to an accusation of lèse-majesté. In Norway, however, the courts were already unanimous by the 1820s that criticism of a government proposal was permitted and could not be considered as showing contempt for the King (Langeland 2005: 199). In Denmark, no attempt was made to bring charges pertaining to lèse-majesté following government criticism, even if in theory this

would have been justified by the King being an absolute monarch. In Sweden, on the other hand, lèse-majesté prosecutions were brought for criticisms of the government's actions.

The jury system introduced into the Swedish courts in 1815 guaranteed that the administration was, in theory, unable to influence the courts in cases relating to freedom of the press. In practice, the court chancellors, who were responsible for monitoring freedom of the press and its 'misuse', did what they could to influence the selection of jurors, instructed prosecutors in press freedom cases and sometimes exercised direct pressure on the courts (Boberg 1989: 97). It transpired that the power of withdrawal introduced following the demands of Karl Johan was ineffective; this resulted in it being generally mocked before finally meeting the end it deserved (Rydin 1859: 198; Boberg 1989: 175). On the other hand, respect for the law was unusually low amongst the ruling classes, even in terms of amendments to constitutional laws; illegalities and pressure when selecting jurors, threats and transparent misinterpretation of laws were so commonplace that both Norway and even autocratic Denmark were clearly states subject to the rule of law to a far greater extent than Sweden, despite the fact that the latter had a press freedom ordinance amongst its constitutional laws.

Only Finland lacked any form of press freedom, but the authorities avoided taking overly heavy-handed actions. Finland was also the only country where the threat of imprisonment and fines was not used to prevent inappropriate writing. On the other hand, its whimsical and petty censorship was oppressive to those few people who had any opportunity whatsoever to express themselves in print.

In Finland, the domestic elite had no opportunity to pursue a policy of freedom of the press, but why was disregard of the law so common amongst the authorities, and even lawyers, in Sweden? When comparing Sweden's eighteenth century political history with that of Denmark-Norway, the latter emerges as significantly more politically stable than Sweden. In Sweden, both during the Period of Liberty and during the Gustavian era, it had become customary to see both the law and the administration of justice as weapons in the political struggle. Even when Gustav III, following his second coup d'état in 1789, founded a specific Supreme Court, the court was organised in such a fashion

that it would be easily susceptible to political pressure – objectionable judges did not have their time-limited mandates extended.

Restrictions on the freedom of the press and the countless press freedom trials in both Denmark and Sweden aroused aversion amongst the public, and this was shared by many officials and judges – even in the upper echelons of bureaucracy. Why did Sweden not take action to realise the beautiful principle contained in RF 1809, and why in Denmark did they not settle for the already restricted freedom of the press set out in the Press Freedom Regulation of 1799? In both cases, personal responsibility rests with the respective monarchs. Karl Johan and Frederik VI were opponents to the freedom of the press and of expression, as well as citizens' rights to participate in political discussions. It was not the legislation – the press freedom regulations of 1799 and 1812 – that limited the freedom of the press, but Frederik's and Karl Johan's attempts to find as many reasons to prosecute as possible. Norway from 1814 is a good example of the ability to live with restrictive legislation relating to freedom of expression so long as the administration did not move to prosecute and the courts saw it as their duty to defend the constitutional freedom of the press.

The Period Prior to the Outbreak of the First World War

In the 1850s, freedom of the press was a constitutional right in the Nordic countries, with the exception of Finland. However, the 1850s were by no means the beginning of a period of broader freedom of the press and of expression. On the contrary, it would transpire that the conservative reaction observed across Europe during the 1880s was to have an impact on domestic policy and press freedom legislation in the Nordic countries. In Denmark, Estrup's government from 1875 to 1894 became an increasingly authoritarian regime, even as they fought off a coup d'état. The autumn of 1885 saw the issuing of the Penal Code Provision, which was exceptional in a country with constitutional freedom of the press. In practice, the law reintroduced the conditions for the freedom of the press that had prevailed during the autocratic years of the 1830s and 1840s, while the Danish Press Freedom Regulation of 1799 was clearly more liberal than the provision, which

was also constitutionally dubious (Himmelstrup 1948: 152–171). In Sweden, there was not the same political unrest as in Denmark, but restrictions on the freedom of expression and of the press were gradually introduced from 1887, taking aim at the labour movement (Alexius 1997: 53). The Penal Code Provision in Denmark aimed primarily to gag the Venstre party – the radical labour movement led by Louis Pios had already been crushed in the early 1870s. In Norway, the Thranites had met with the same fate in the 1850s. In Denmark and Sweden, where there were prosecutions of the representatives of the labour movement, all social criticism was deemed dangerous agitation, while at the same time the existence of the oppression of the working class was denied wholesale. After the 1850s, the domestic political struggle in Norway was between the conservatives and the liberals. The impeachment of 1884 marked a victory for the Venstre party, and there were subsequently no further laws drawn up aimed at the labour movement. In Finland, the climate of censorship intensified from the 1880s.

In summary, it can be stated that restrictions on the freedom of expression in Sweden and Denmark during the second half of the nineteenth century and beginning of the twentieth century were primarily aimed at the labour movement, while censorship and repression in Finland affected anyone who opposed the imperial policy of Russification.

Even after the 1850s, Nordic freedom of expression and of the press was, to a small extent, dependent on the penal provisions of legislation, and in Finland on the censorship regulation catalogues of prohibited matters. If one only takes into account the norm, the Nordic countries appeared largely to form one unit, while in practice there were significant differences. The enthusiasm of the government and prosecution authorities about bringing charges relating to freedom of the press varied in the different countries and during different periods, and even if nowhere the courts were the unresisting tools of the political powers, the risk of charges was already an obstacle to the free formation of opinions. Sanctions for infringements of legal restrictions were typically fairly lenient, and imprisonment – usually for just a few months – was used rarely. Fines, however, had an impact

on the finances of both the convicted individual and the press, and in the case of a lack of assets fines would be converted into what was frequently a fairly long prison sentence.

At least in Denmark, it became increasingly common to impose arbitrarily high damages for infringements of legal restrictions, especially in the labour market. It was only in Finland that there were open attempts to hurt the finances of the press through a prohibition on advertising and the sale of individual issues (Leino-Kaukiainen 1984: 56), but other financial sanctions were at least as effective.

Lawyers played an important role in the management of the statutes relating to the freedom of the press, not least through the courts as well as by means of the administration. Legal scholarship, on the other hand, made only a minor contribution, as had been the case during the first half of the century, despite the quantitative increase in literature. In Denmark, the law was openly political and the foremost figures in jurisprudence supported the Estrup government's anti-press freedom initiatives (Himmlestrup 1948: 230–239; Björne 2018: 302–313).

Conclusion: the Difficult Freedom

A common feature of Nordic freedom of expression and of the press was that all Nordic monarchs with personal power were opponents to the concepts. The fact that the Russian Tsar was negatively disposed to any form of press freedom was hardly surprising, and even Alexander II – considered by many a liberal – reintroduced censorship to Finland following a short-lived and half-hearted attempt at freedom of the press.

However, it would be one-sided to put all the blame upon monarchs and their reactionary advisers for the suppression of the freedom of expression. In reality, a negative attitude towards freedom of the press and of expression ('its misuse') was common to all those in power. The educated elite, who had fought *for* freedom of expression at the beginning of the nineteenth century and *against* monarchical autocracy, used their newly-won power later in the century to restrict freedom of expression for those social classes that had been excluded from political power by means such as rules relating to suffrage.

It may even be claimed that freedom of the press was more extensive in Sweden in the Karl Johan years, when the power of withdrawal was made a mockery of through the use of 'ansvaringar' (responsibilities) (decoys who continued the publication of withdrawn publications), than at the end of the 1880s when prosecution frenzy took hold and far more restrictive legislation was aimed at the social democrats. The same was true in Norway in the era of Karl Johan, when the courts protected the freedom of expression from what were considered to be the restrictive policies of the conqueror, compared with the 1850s when the suppression of the Thranite labour movement occurred, remaining to this day a stain on the history of freedom of expression in Norway. During the final stages of absolutism in Denmark during the 1830s and 40s, freedom of expression was, in practice, more widespread than during the authoritarian years of the Estrup regime in the 1880s. In both Denmark and Finland, the monarch remained a symbol of the censorship mentality and suppression of the free word during the second half of the nineteenth century, and in both countries this resulted in countless prosecutions relating to the freedom of the press and convictions for lèse-majesté.

The *court ideology*, the right for the accused to have their case tried by a court, was an important protection for the freedom of expression, but even this shield had its limits. In the later years of Danish autocracy, during the initial decade of Norway's union and in Finland during the years of suppression from 1899, judges were not willing to accept the requirements of the authorities without question. Common to these periods of the courts' independence or self-will was that the judges, or at least most of them, took a negative stance with regard to their rulers and therefore opposed those austerity measures in terms of freedom of expression policies that were not directly supported in law. In Sweden, the court ideology began to wane in significance as early as the 1810s, when opposition between the courts and the authorities was not perceptible.

However, the ability to make criticisms was easily lost if the judges had the same political views as their rulers, which became increasingly clear during the second half of the nineteenth century. The Swedish courts, led by the Supreme Court, embroiled in an ever fiercer battle

against the labour movement, the Danish courts headed by the Supreme Court during the Penal Code Provision in the 1880s, and – following the end of the period under consideration – the Finnish courts headed by their Supreme Court following the civil war of 1918 are all examples where judges were not immune to their own political views. Furthermore, common to judges in all Nordic countries was that those within the labour movement charged with infringing legal restrictions were not granted the right to 'equality in the eyes of the law' as it is often so grandly described.

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