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**PRESS
FREEDOM AS AN
INTERNATIONAL
HUMAN RIGHT**

Wiebke Lamer



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Right

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CHAPTER 1

Introduction

Abstract This chapter introduces the reader to the subject of press freedom in the context of human rights and provides an outline of the book. It discusses current press freedom trends, particularly in Western societies, and provides an overview of the status of press freedom in the UN human rights debate and in the academic literature.

Keywords Press freedom · Human rights · United Nations

The sense of optimism in the early 1990s surrounding the future of Western liberal democracy and human rights was immense. The Soviet Union collapsed, and the world was supposedly witnessing the “end of history” that would mark the triumph of Western liberalism and the universalization of its norms and values. As some observers have pointed out, the media in both democratic and democratizing countries, along with new developments in information and communication technologies, were greeted with similar confidence and optimism (Dine 2001; Starr 2012). Liberal theory holds, after all, that a free press, meaning a press that is free from government control, is vital not only to political processes, but also to the development and maintenance of personal autonomy and the right to self-determination.

More than 25 years later, it has become obvious that this confidence about the bright global future of Western ideals and institutions was premature, particularly regarding freedom of the press. Press freedom

around the world has increasingly come under attack over the last decade. In 2016, the proportion of the global population that enjoys a free press fell to its lowest level in 13 years, and only 13% of the world's population now live in countries with a press that earns the Freedom House status "Free" (Freedom House 2017, 3).

Despite this somber reality, press freedom has received limited attention in the context of international human rights. The benefits of a free press for economic and political development have been documented.¹ But coverage of press freedom as a human right per se is absent from the academic literature. This book fills this gap by examining why press freedom has not become part of the established international human rights discourse, despite its centrality to democratic theory. It argues that press freedom is a cornerstone of human rights and democracy and should be treated as such in the academic literature and the international human rights debate. It submits that an unrestricted press is not just an important economic actor, but also an influential power in the political process, a status that interferes with the interests of governments in sustaining their own power and influence. Consequently, states undermine press freedom at home or its promotion on the international stage.

1.1 PRESS FREEDOM IN THE WEST

Press freedom is not easy to define. Lawyers and constitutional scholars have been grappling with this challenge for centuries. Instead of rehashing the intricacies of this debate, this book will work with the definition that press freedom constitutes a press free from government interference. Government interference can come in different ways. For the purposes of this book, it shall mainly refer to government censorship, intimidation (or attempts thereof) of journalists and news media workers by government officials, and attempts at regulating the news media. In other words, it refers to any government action that thwarts efforts of the news media to report freely on public affairs, whether they are political, economic, or otherwise. In this context, government or taxpayer subsidies to broadcasting institutions will not be considered a form of government interference. Many Western European news broadcasters, like the BBC, receive such government subsidies but are nonetheless considered independent because they are allowed to report freely even if it is critical of the government.

While violent suppression of journalists and media workers is not common in the West, democratic governments are no strangers to curtailing press freedoms. Instances in which Western governments attempt to intimidate or regulate the news media are on the rise. In the UK, the impact of the Leveson inquiry, which followed the *News of the World* phone hacking scandals and proposed the establishment of a new press regulator, lingers. Journalists are also under threat from surveillance legislation, which makes it easier for authorities to target whistle-blowers, journalists, and their sources, thus undermining important investigative reporting. Counterterrorism legislation in other European countries such as France and Germany has similar effects. Other European countries saw a substantial weakening of press freedom in recent years, most notably Hungary and Poland, which have experienced dramatic government crackdowns on the free media and fell from Free to Partly Free in the Freedom House Press Freedom rankings.

The United States, historically the poster child for press freedom, has also seen administrations crack down on rights that secure a free press throughout its history. Only a few years after the First Amendment was passed, the Alien and Sedition Acts of 1798 came into force. Publishing “false, scandalous, and malicious writing or writings against the government of the United States” became a crime under these acts and led to the prosecution of 14 people (Lewis 1991, 63). Primary targets were editors and owners of the leading *Republican* newspapers that supported their political party and criticized President John Adams’ Federalist government. The laws expired only a few years later, but even Thomas Jefferson, a strong opponent of the acts, could not resist the temptation to use them to prosecute several of his own critics (Chernow 2004, 667–68). The Sedition Act of 1918 followed a similar pattern, stating that whoever shall “willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States... shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both....” The 1918 Sedition Act only applied in times of war and was repealed in 1920, but it continued the pattern of restricting free press and free speech under the guise of national security concerns to the detriment of writers, journalists, editors, and publishers.

More recently, the Patriot Act that was passed shortly after the September 11 terrorist attacks has resulted in legislative changes leading to more government secrecy. The news media have been considerably

affected by these new laws, as their task of informing citizens on government activities has become increasingly difficult since 9/11. In the wars in Afghanistan and Iraq, for example, the US government and military have gone to unprecedented lengths to limit unflattering media coverage by banning interviews with soldiers or taking photos of coffins of US military personnel who died overseas (The Reporters Committee for Freedom of the Press 2005, 41). In 2005, a report by the Reporters Committee for the Freedom of the Press warned that “U.S. journalists face an increased likelihood of being seen as government informants with no constitutional right to keep sources confidential or to withhold unpublished materials from prosecutors.” This situation did not improve under the Obama administration, which also carried out crackdowns on investigative journalists and their sources (Downie and Rafsky 2013). In 2013, for example, the Department of Justice seized confidential phone records of reporters and editors of the Associated Press, which highlighted how serious the US government was about controlling the flow of information (Savage and Kaufman 2013). But journalists have also faced increasing obstructions like willful thwarting of witnessing or recording of events, physical violence, or threats thereof in covering protests such as the 2011 Occupy movement and the unrests in Ferguson, Missouri, in 2014, which included detentions, harassment, and rough treatment of journalists by police.

It is quite obvious then that “the right on which all other rights depend” as the liberal European theorist and Napoleon opponent, Mme de Staël, described press freedom has and still is experiencing more than its fair share of suppression and neglect. It has also received little attention in the context of human rights. At first glance, this might strike readers as an odd observation, considering that non-governmental organizations like Freedom House and Reporters Without Borders dedicate substantial resources to compiling periodic reports on press freedom violations across the globe. There is no shortage of reports monitoring the atrocities committed against media personnel worldwide, and recent progress has been made at the UN on the issue of safety of journalists. There also seems to be a continuous debate on topics relating to the Internet and other new information technologies in the broader context of international relations and human rights.

However, discussing the role of the Internet on social movements, combatting threats to journalists in war zones, or tallying incidents in

which journalists or bloggers have been deprived of their right to free expression is distinct from addressing press freedom as a human right. Press freedom is not the same as freedom of information. Neither is press freedom the same as freedom of expression or speech. Certainly, these concepts and rights overlap (as will be discussed in more detail in the next chapter), but they quite substantially differ on the fact that protecting a free press also protects a—if not *the*—vital institution in a democratic society. To put it in Jefferson’s famous words: “were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.”²

1.2 PRESS FREEDOM AT THE UN

The political aspect of press freedom, however, is seldom taken into consideration in the context of human rights in the international discourse. Press freedom lacks legal institutionalization in international human rights law. Unlike the French revolutionaries and the American Founding Fathers of the eighteenth century, the creators of the Universal Declaration of Human Rights did not include an explicit provision for freedom of the press. For the UN, press freedom falls under Article 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Some might argue that the phrasing does not matter, that in principle Article 19 preserves the same right as the First Amendment: “Congress shall make no law... abridging the freedom of speech, or of the press....” But given the lack of focus on press freedom at the international level, the phrasing is instructive. One explicitly stresses freedom of the press—as a group, an institution. The other guarantees the individual right to expression through all media. In the latter, the media are an afterthought, a mere tool, to secure the right to freedom of expression, rather than an entity worthy of protection itself.

General usage trends of terms such as “press freedom” and “freedom of expression” also confirm that historically, debates about the latter have garnered more attention. Figure 1.1 shows the rise of the phrase “press freedom” compared to the phrase “freedom of expression” in the English language from 1900 to 2008 based on the Google Books database of