

The Experiment with Unrestricted Press Freedom from 1770-73 mirrors the Freedom of Expression Dilemma of modern Social Media

By Wolfgang Mostert, cand.oecon. & phil. wolfgang@mostert.dk January 2021

Whereas the internet and its social media platforms is a modern phenomenon, the regulatory debate about how freedom of expression can be reconciled with accountability for the harm that unrestricted freedom of expression can and does cause is several centuries old. How to regulate abuse became a topic within few months after the 21-year old King Christian 7 signed the Freedom of the Press Ordinance of September 1770 making the kingdom of Denmark-Norway the first country in the world to introduce unrestricted freedom of the press.

It was a bold experiment in social communication. Till then, all publications in Denmark had been subject to a pre-censorship regime. The Danish Law from 1683, the civil and criminal code of absolutist monarchy rule introduced in 1660, specified that a text, to be printed, required prior approval by the Consistory of the University of Copenhagen. Permission to print was verified by the signature *Imprimatur* (to be printed) and the approving professor's name on the back of the book's first or last page. The members came mainly from the theology department, which was quite pertinent as the censorship aimed primarily at writings of political and theological content. The sanctions stipulated in the Law were severe: whoever criticized God or the King must have his tongue cut out, his head chopped off and his tongue put on a stick.

The Press Ordinance was the brainchild of the King's physician Johann Friedrich Struensee, a German from the Duchy of Holstein, a German Roman Empire fief under personal union with the Kingdom of Denmark. Struensee was deeply influenced by the *Zeitgeist* of the time: Enlightenment socio-political philosophy and its insistence on the freedom of thought and individual responsibility. Old-fashioned societies were to be reformed through the introduction of new social systems, built on scientific thinking and reason instead of on religion and tradition. By becoming the trusted advisor of the mentally disturbed King also on political issues, Struensee managed to sideline and oust the senior officials of the State Council, replacing this advisory body by Cabinet government. Struensee *de facto* ruled Denmark from May 1770 to January 1772 in collaboration with the Queen Caroline Mathilde, a sister of King George 3 of England, who as a 15 year old had married Christian 7 five years earlier. The absolutist monarchy regime enabled his power position. The King's Law of 1665, its constitutional basis, stated that the King was above law and stipulated that any state ordinance or order required signature of the King. Influence over the signature of the King was power.

The more than 1800 orders and regulations issued during the one-and-half years of Struensee's 'rule', followed Enlightenment ideals. E.g. use of torture was abolished. The justice system was modernized and the number of specialized courts sharply reduced. A regulation fixed the amount of required *hoveri* work (labour obligations of tenant farmers on the estates owned by the nobility) according to the size of the tenant's land and required landowners to give tenants a receipt for performed work. The amount of *hoveri* was not specified in the attachment contract between a tenant and the landlord; and landowners had exploited the indeterminacy to expand it during the 18th century. Similar enlightened reforms of society were undertaken by Empress Maria Therese of Austria and King Friedrich the Great of Prussia.

Struensee expected that enabling free debates about corruption, outdated practices, religious dogma and social inequality would build public support to his reform program. However, he experienced that freedom of expression is a double-edged sword. The story, told in the book *Grov Konfækt I-II* from 2020 by the three historians and philosophers Henrik Horstbøll, Ulrik Langen og Frederik Stjernfelt, shows remarkable similarities with present day social media platforms.

Acceleration of public debates. The sidelining of the traditional gatekeepers of information – the elimination of the delays incurred by the censorship process – reduced the response time of debates. In Copenhagen; the population of 80,000 inside the city walls had 15 different printing companies available for them. The infrastructure enabled counterarguments to positions put forward in a pamphlet or flyer to be sold on the streets in less than five days. It led to fast and intensive pros- and cons reactions to published positions.

New voices and readers. The new pamphlets reached audiences beyond those accessed by the newspapers such as *Adresseavisen* and *Berlingske Tidende*. Writings with very easy-to-read content were read by all estates in Copenhagen. Common people used to be entertained and informed about the latest events and disasters primarily through the publication of the so-called “skillingviser” ; a satirical song published as a printed matter, typically in the form of a four-pager with illustrations. They were sung and sold at marketplaces and pubs by children and market singers and covered all sorts of colourful topics: sailor songs, soldier songs, patriot songs, news about murders and trials, accidents and disasters, war and politics, royal family. General citizens participated in policy discussions, that previously were restricted to a political elite. Although mainly the urban population could take active advantage of the new freedom of expression, pamphlets circulated and were discussed also by the rural population, which made up 80 percent of the total population.

Criticism of the establishment. A written objective of the 1770 Ordinance was to enable writers to “inform about delusions and prejudices of older times” and to “attack abuse and expose prejudice” . Initially, such publications dominated. Church and religion were subjected to criticism that had not been possible when the theologians in the Consistory could block publications. Inconsistencies in the text of the bible were pointed out. It was discussed whether it was reasonable to expect that sins committed during the short period of a lifetime on earth should condemn a soul to eternal damnation. The clergy was attacked as parasitic. The civil establishment was attacked; in particular the privileges of the nobility and nepotism in occupation of office. Pamphlets wrote about the stench in the city and what was seen as public immoral behavior. A bankrupt brewer published pamphlets accusing the Brewers’ Guild and its Chairman for being responsible for bankruptcies among breweries by protecting the manufacturing monopoly of beer brewed on white malt. Pamphlets and books discussed economic theories and policy. Foreign books, forbidden in the country of the author, were printed in Copenhagen.

Multimedia. The public debates were performed in several genres and forms: fables, allegorical tales, biblical moral sermons, flaming pamphlets, argumentative refutes, poems, plays, and so on. When, for the first time in Denmark, a new theater play was subject to a published and critical review, the writer of the play (who also was Director of the theater) wrote a response that he let be performed at the theatre. The noisy reaction of the theater audience to the performance was divided; some booed (mainly students), others applauded (mainly soldiers).

New business opportunities for news. One-pagers were affordable also for poorer sections of the population. The mass market for “pseudo-news” created business openings for students and other entrepreneurial writers who found out that they could make a living out of fabricating real and fake news and get them printed.

Preference for anonymity. Despite the complete freedom of the press, few authors dared to have their author's name on the title page; most preferred to hide their identity under a pseudonym.

Gossip, fake news. It did not take long before anonymous writings were published, whose sole purpose was to throw mud; the trend quickly turned into a flood. The pamphlets used an extremely rough tone. Although it was normal in the literature of the time to formulate positions in exaggerated terms; the writings from this period, often in the form of ‘skillingeviser’, went beyond normal levels of insult and encouraged brawls in pubs and public places.

Shitstorms and shaming. The harsh tone in some pamphlets led to published counter-reactions, criticizing extreme views and loudness and arguing for a more civilized debate.

Discussions about limits to freedom of expression. The Brewers’ Guild reacted to the attacks by the bankrupt brewer with counter-pamphlets and threats of libel accusations if he continued. The Critical Journal, a literary journal, brought a review of the writings from both sides and ended with a general reflection on public function. It concluded that if the freedom of the press was used for personal insults, the writer would have to be prosecuted; but it did not make sense, as the Guild did, to simply dismiss criticism as insults.

Need for regulation to promote accountability of writers and of printers. During the initial months, most writings were positive about Struensee's reforms. From the summer of 1771, when Struensee's reforms had begun to take effect, and rumors of his love affair with the Queen and her pregnancy had spread, the population turned increasingly hostile against him. Writings critical of his initiatives and his person became increasingly insulting. Struensee’s regulatory response to the situation was a Royal Order of October 7, 1771. It emphasized that the freedom of press should not be misused to violate civil laws on libel and rebellious writings. It stipulated, therefore, that nothing could be published without it bearing either the name of the printer or the author on the title page; and it was forbidden for printers to print a script without being aware of the author's identity.

Coup against Struensee. The power position of Struensee was precarious, depending solely on his access to the King. The hoveri reform had turned the landowners against him; cut-backs in the military and in public and military salaries and pensions the military-administrative establishment. His love affair with the 20-year old Queen, which resulted in a pregnancy and later birth of a daughter, provided conspirators with a legal case for action: insult of majesty. On January 16, 1772, directed by the Widow-Queen (the King's stepmother), her son (his half-brother) and ousted members of the State Council, two officers forced the terrified King to sign an arrest warrant for Struensee. A special Commission Court sentenced Struensee to brutal torture and death by beheading. Queen Caroline Mathilde was divorced and sent to Celle in northern Germany on an estate belonging to the Duke of Hannover, the house from which the royal British family originated. Two years later she died.

Political spin after the coup. Already the day after the coup a political propaganda machine was put in motion. Priests wrote newspaper articles and pamphlets declaring the downfall of Struensee as God's intervention against the usurper and immoral sinner and as a reaction to the disagreement among the population caused by his reforms and the freedom of the press.

Stepwise elimination of press-freedom. In October 1773 a Royal Order prohibited publications to include rumors about the State and Government or fabricated narratives containing anything insulting or obscene. It gave the chief constable the authority to monitor publications and issue fines for break of rule. In December 1790 a Royal Order introduced judicial review of critical writings rather than allowing the chief constable to judge for himself whether fines should be issued. On December 1797, a new Press Ordinance carefully defined what was considered infringement of the existing freedom of press, specified penalties for infringements - exile or execution for the worst cases - and reintroduced ex-ante censorship for publications shorter than 25 pages. They had to be sent to the police constable for review who could block publication if a text violated conditions defined in the ordinance. The Ordinance was repealed by the Constitution of 1849, which abolished the absolute monarchy regime.

Thus, already in the late 18th century, the establishment was ambivalent about public opinion: on the one hand, confidence in that public discussion about the organisation of society could make a positive contribution and, at the same time, a deep distrust of the mob's smears. QAnon and fake news is old hat and cancel activists at Cambridge, Oxford and US coastal universities a reincarnation of the theology professors on the Consistory practicing pre-censorship.