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Rethinking Imaginaries: A Discussion on the Swedish Tradition of Openness, the GDPR, and the Case of Publication Certificates

An Ideographic Analysis of Ideology and Utopia in the Rhetoric of the Swedish Parliament on the Matter of Voluntary Publication Certificates

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Abstract

Sweden has an almost three-century-long tradition of openness, whose principles are enshrined in the state's fundamental laws. When the revolution of the Internet was in full bloom at the turn of the century, with new forms of mass communication innovating the media landscape, Sweden saw the opportunity to strengthen freedom of expression and information, as one of the main pillars of openness. The constitutional protection ensured by the Fundamental Law on Freedom of Expression was thus extended to encompass emerging online activities aimed at disseminating information and facilitating free speech. What was needed to acquire this protection was the voluntary issuance of a so-called 'publication certificate.' The accessibility of these certificates was exploited by many, including a new type of search service that extracts people's data from public registers, compiles it, and publishes it online, available for everyone to access.

The mission of this master's thesis is to carry out an analysis of the shifting values of openness and privacy in Swedish society, by following the life-cycle of the publication certificate and the attitudes towards its controversial use, as reflected in the rhetoric displayed in motions and debates of the Swedish Riksdag. The first hypothesis is that the pre-eminence of openness in Swedish society becomes gradually shadowed by privacy and data protection concerns. The second one is that, on the background of augmenting discontent over 'too much openness', the process of Europeanisation in the area of protection and processing of personal data is also accelerated. Both hypotheses are tested by placing the principles of openness and privacy within Ricoeur's concept of social imaginary, animated by ideology and utopia as opposing and coexisting forces. The theoretical framework is complemented by elements belonging to Berger and Luckmann's social theory of knowledge, while the main methodological tool for approaching the sources is McGee's Ideographic Criticism.

Keywords: openness, freedom of expression, privacy, data protection, GDPR, social imaginary, ideology, utopia, Swedish Riksdag, social reality.

List of abbreviations

EU	European Union
The Commission	European Commission
GDPR	General Data Protection Regulation
FLFE	Fundamental Law on Freedom of Expression
FPA	Freedom of the Press Act
ECHR	European Court of Human Rights
MP	Member of the Parliament

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1. Introduction

1.1 Storytelling of a Student

One day, an international student who has just moved to Sweden makes a search on the Internet for the name of a well-known Swedish professor. The student is researching for a seminar project and needs an introduction to his academic portfolio. The results of the search are rich. The website of the university where he teaches provides a comprehensive overview of his work, another website connects his name to a co-edited volume, which seems to be a great finding for the project. Immersed in the work, the student notices one result slightly different from the others. The name of the professor, together with his age and his home address appears as the heading of a website which is by no means of academic nature. The student accesses the website, surprised by the generous amount of personal data about this person, made public for everyone to see. Intrigued, the student starts exploring the website and four similar others having the same profile. After a ten-minute check on the Internet, the student knows that the professor in question wrote three papers that should be put on the reading list for the project, but also that the professor is 65 years old, is living in the north of Stockholm, next to a well-known museum as the map was explicitly indicating, and that he is not living alone but with a 62-year old woman whose name sounds Italian. Moreover, his apartment is 70 square meters and his birthday is in forty-six days (there is the option of sending him flowers to the address, as well). Anyone could call to congratulate him, as his phone number is on full display. There is also the possibility to find out how much he is earning, but you need to pay a subscription fee to get access to this category of data. Suddenly, an idea comes to their mind: is their information also public? The student fervently types their name in the search bar. As expected, they also have a page of their own on each of these peculiar websites, providing their name, address, date of birth, and phone number. “They live on the first floor, second door on the right.” The student creates a mental map of their accommodation. The website is right, although they never really thought about the position of their room in the building. During all this time, the student felt a strange mix of curiosity and discomfort. A simple question was preoccupying their mind: why is all this information available online? In their home country, the student would have never conceived of the existence of such platforms. Everyone would have been scandalised there. Truth be

told, the student is not very at ease with the thought that everyone can easily learn that their room is on the first floor, second door on the right in the corridor. The next day, when meeting a Swedish friend, the student shares their thoughts on the discovery, asking how people in Sweden feel about this online exposure of rather personal aspects of their identity and life. The friend answers with an indifferent expression and tone: “It is like that in Sweden. We are very open here.”

1.2 “It is like that in Sweden. We are very open here.”

Following the reflection of the student and the reply of the Swedish friend, the idea that the concept of openness belongs to the self-image and identity of Swedish society as a guiding principle becomes evident. The tendency towards an ‘open society’ has early beginnings, with Sweden being the first country to adopt the Freedom of the Press Act in 1766. Currently, the reputation of Sweden as a particularly ‘open’ country is equally recognised abroad and has been strengthened by the international popularity of accountability and transparency put in the service of democratic practices of the public as well as private power.¹ The principle of publicity and public access (*offentlighetsprincipen*)², the freedom of sources (*meddelarfrihet*)³, a free press, and free speech are some of the key elements of Swedish institutional openness.⁴ Openness in its multiple manifestations has infiltrated many of the aspects of social, political, and institutional life in Sweden, shaping its social knowledge and reality. Nonetheless, to which extent can the collective belief in openness, especially in the right to freedom of expression and information, be protected and kept unaltered to the detriment of opposing rights and values, such as personal privacy and the right to data protection?

This is a question that became more ardent in the last years in Sweden. Firstly, an internal phenomenon that spurred controversy and debate among politicians, businesses and citizens is the proliferation of online search engines freely publishing the personal data of residents under voluntary constitutional protection using certificates of no legal impediment to

¹ Marklund, “Open Skies, Open Minds?”, 145.

² The Principle of Publicity ensures citizens the right of access to public documents and is enshrined in the Freedom of the Press Act (*Tryckfrihetsförordningen*), Second Chapter, Article 1. The Freedom of the Press Act is one of the four Swedish Constitutional Laws.

³ *Meddelarfrihet* guarantees the anonymity of whistleblowers and is regulated in the Freedom of the Press Act, First Chapter, Article 1.

⁴ Marklund, “Open Skies, Open Minds?”, 145.

publication' (from now on, 'publication certificates'), as established in the Fundamental Law on Freedom of Expression. Secondly, an external force is also challenging the existing social order of openness - the stricter and more detailed EU legislation for the protection of personal data. In 2018, Directive 95/46/EC regulating the processing of individuals' data was repealed and replaced by the General Data Protection Regulation (GDPR), which entailed the direct application of its provisions in the Member States. Although the voluntary constitutional protection acquired by these websites implies exemption from the provisions of the GDPR, this privilege was not yet judged by the Court of Justice of the European Union, a perspective which becomes more and more 'menacing' for Sweden.

1.3 Relevance of the Research Topic and Research Questions

This double source of tension, both domestic and foreign, activates mechanisms of change, including in the seemingly impenetrable tradition of openness in Sweden. To better highlight the dynamic between the existing social reality, where openness is preeminent, and disruptive elements such as privacy concerns and EU pressure, the thesis will analyse parliamentary motions and debates corresponding to three main legislative proposals of 2001, 2016, and 2022. All concern the voluntary constitutional protection through publication certificates. The analysis will be made through the lens of Berger and Luckmann's (1991) Social Theory of Knowledge and, in particular, through the concepts of ideology and utopia developed by Mannheim (1929) and Ricoeur (1984). These theoretical elements will be highlighted with the help of McGee's (1980) Ideographic Criticism as a method belonging to the broad field of rhetoric criticism.

The purpose is to identify in the discourse of the Members of the Swedish Parliament (*Riksdag*), using ideographs, the conflict between the attempt to preserve the deeply rooted image of Swedish openness (ideology) and the growing tendency towards privacy (utopia). Also, by exploring chronologically the parliamentary discussions starting with 2001, when voluntary constitutional protection was adopted and the controversial websites did not exist yet, to 2022, when multiple conflicts had already arisen, the analysis will be able to track the evolution of the rhetoric used. The incremental change in rhetoric, indicating an increasingly visible promotion of personal privacy and data protection, is not only showing a shift in the perspective of the political class but reflects a reorganisation of the social order as well.

Moreover, the idea that the perception of fundamental rights (e.g., freedom of expression and protection of personal data) is also culturally, historically and socially determined, reveals a smouldering tension for the European integration process. In the light of a European legal framework for data protection, the relativism of moral rules and values at the national level becomes more salient. The nuances that moral rules develop in the collective perception of distinctive societies become more visible when they are assessed under the same legal umbrella.

That being said, the study will revolve around the following research questions:

1. How does voluntary constitutional protection change the dynamic between the ideology of openness and the utopia of personal privacy in the Swedish imaginary from 2001 to 2022?
2. How does the perspective on EU law displayed in the discussion of 2001 differ from the perspective of 2016 and 2022, respectively?

1.4 Previous Research

The research conducted on openness in Sweden, especially on one of its most important pillars, that is, the principle of access to documents is abundant. For instance, Rosengren⁵ addresses the principle of public access to official documents using a linguistic-historical approach. The author analyses how the principle of public access to official documents is understood and what its meaning and boundaries are by exploring how expressions such as “the principle of public access to official documents” or “public access to documents” are used in different situations and documents over time. By studying several official reports from the late 1980s to 2016, the author notices an emphasis on the principle of publicity providing some kind of “power to the people”⁶ Also, the argument that “the principle of public access to official documents” might constitute a “boundary” appears about the EU rules for data protection.

⁵ Rosengren, “Power to the people - or privacy in peril? A linguistic-historical analysis of the meaning and boundaries of Swedish principle of public access to official documents”

⁶ Rosengren, “Power to the people - or privacy in peril? A linguistic-historical analysis of the meaning and boundaries of Swedish principle of public access to official documents,” 27.

Openness in Sweden was studied from a sociological point of view as well by Marklund (2015), where the author distinguishes between openness as information and openness as communication:

The free flow of information is usually seen as facilitating the free communication of different opinions. The implicit assumption is that some kind of balance and understanding between different interests will result thereby. Yet, there is a tension between openness as communication (when anything can be said) and openness as information (when everything can be known) which tends to surface when transparency policies are to be evaluated.⁷

Few papers have addressed the issue of publication certificates in Sweden. However, Karnell's reflection note EU Data Protection Rules and the Lack of Compliance in Sweden conducts a harsh criticism towards the derogation that the certificates received from the provisions of the GDPR, describing it as "unconstitutional":

It deprives citizens of their constitutional right to effective data protection and respect for their dignity as guaranteed both by the EU and the Swedish constitution, Ch 2 in the Instrument of Government as well as the ECHR. [...] there needs to be a proportionality assessment of the Swedish derogation as well as an examination of the true justification, i.e. if the state wants to earn money from selling the information or whether it is really about freedom of expression.⁸

Another in-depth examination of the certificates was carried out by Österdahl (2016) and highlights the complexity of the matter:

It is not often that legal and technical developments, and the resulting dilemmas, are so clearly illustrated as in the case of the protection of personal data versus the principle of openness in Sweden. [...] The fate of the Swedish openness principle – as far as its competition with the protection of personal data is concerned – will now depend on the legal technical ingenuity and negotiating cleverness of the lawyers informing the Committee on the fundamental media laws at home and of the Swedish negotiators on the homestretch in Brussels.⁹

After navigating the existing literature, this dissertation intends to respond to a need that the author identified, namely to approach the topic of the Swedish publication certificates from a sociological perspective, by integrating it into the broader picture of an ideology of openness in Sweden and by observing the disruption produced by a growing concern for personal privacy and EU disapproval.

⁷ Marklund, "Open Skies, Open Minds? Shifting Concepts of Communication and Information in Swedish Public Debate," 163.

⁸ Karnell, "EU Data Protection Rules and the Lack of Compliance in Sweden," 101.

⁹ Österdahl, "Between 250 years of free information and 20 years of EU and Internet," 40.

2. Contextualisation

The tension between Sweden and the EU rules for data protection originates from different bases on which the view on openness and privacy developed. Österdahl (2016) argues that the long-standing tradition of transparency fostered in Sweden is not aligning with the standards that the EU law is promoting, that is, a rather opaque policy on personal data and greater privacy:

Swedish law places a great value on maximal openness, whereas EU law tends to be more secretive in general and to place a great value on the protection of personal privacy in particular. [...] The protection of privacy has traditionally been weak in Sweden, whereas the right of public access to information is strong.¹⁰

2.1 The Origins of Openness in Sweden

To track the origins of the Swedish tendency towards openness, one has to go back to the 18th century when, in 1766, Sweden enacted the first law in the world guaranteeing freedom to publish and the first state to guarantee freedom of access to information of governmental and public affairs.¹¹

The Swedish Press Law of 1766¹² is innovative and ahead of its time in many aspects, not less by its clearly stated purpose, that is, enlightening and providing the people with the information necessary for progress and better governance: “[here] is set forth in clear language the concept that an enlightened and informed public is necessary to progress and good government.”¹³ Moreover, the law was intended to lower the wall between the people and the secrecy of public affairs, serving thus “not only as a medium of information and enlightenment but also as a check on the government.”¹⁴

Swedish history crossed, between 1718-1772, the so-called “Age of Freedom” (also known as the “Time of the Enlightenment”), when the royal power lost its grip and the Parliament became the controlling body of all the state departments.¹⁵ The changes were not present only

¹⁰ Österdahl, “Between 250 years of free information and 20 years of EU and Internet,” 27-28.

¹¹ Bryan, “Enlightenment of the People Without Hindrance”: The Swedish Press Law of 1766, 431.

¹² KongL Maj:ts nådige Förordning Angående Skrif- och Tryck-friheten Gifwen Stockholm then 2. Decembr. 1766.

¹³ Bryan, “Enlightenment of the People Without Hindrance”: The Swedish Press Law of 1766, 431.

¹⁴ Ibid., 431.

¹⁵ Ibid., 431.

in the political organisation, but new ideas started to develop on the social and cultural scene as well. Influenced by English and French rationalists, freethinkers, and deists, Sweden began to foster a growing belief that reason and education could propel the progress of mankind.¹⁶

It is within this emerging spirit of liberty that a law which was intended for the partial liberalisation¹⁷ of the activity of printing and publishing and the ‘inauguration’ of a principle of public access to documents could be enacted and supported by all classes. “Enlightenment of the people without hindrance”¹⁸, an extremely optimistic ideal expressed in the preamble of the law, was believed to improve behaviour and customs by educating the people on the content of laws, the “blessings” of the constitution and how the state is governed. This first Press Law was nevertheless not long-lived and was abrogated in 1774 when absolutism flourished again in Sweden. However, the later versions of the Press Law of 1809, of 1812 with all its successive amendments, and culminating with the present law enacted in 1949, have preserved, despite matter-of-course modernisations, the original principles introduced in 1766.

Reflecting the values of the Enlightenment, the Swedish Press Law of 1766 is a Europe-wide pioneer of the legal frameworks protecting freedom of the press and freedom of access to information, way ahead of their modern development in democratic societies. This first burst of openness and transparency and its desired positive impact on the public interest through education has influenced to this day the Swedish perception of information and its accessibility, two essential elements that concern both the freedom of expression and the protection of personal data, as the two opposite ends of the same spectrum.

2.2 The EU Tendency Towards Privacy and Protection of Personal Data

The atrocious crimes of the Holocaust, which haunted post-World War 2 Europe, have led to a re-evaluation of how deeply the governments should penetrate the private lives of their citizens. The debate on state surveillance, considered to be one of Nazi Germany’s weapons

¹⁶ Ibid., 431.

¹⁷ The freedom to publish was, of course, not absolute but constrained by specified exceptions e.g., the church and the evangelical doctrine, the fundamental laws of Sweden, the rights of the Riksdag, the integrity of the royal family and of the monarchy, or derogatory statements against other citizens.

¹⁸ Bryan, “Enlightenment of the People Without Hindrance”: The Swedish Press Law of 1766, 432.

for tracking and categorising populations ahead of their deportation to concentration camps,¹⁹ became popular since the very beginning of European cooperation, not least by pushing forward a discussion on the right to privacy. The Council of Europe was the first European organisation that addressed the right to privacy in the Convention for the Protection of Human Rights and Fundamental Freedoms (currently the European Convention on Human Rights) signed in Rome, in 1950.²⁰ Article 8 in the Convention stated that “[e]veryone has the right to respect for his private and family life, his home and his correspondence.”²¹ Given the debate on the state intrusiveness in the private affairs of individuals, the right was therefore initially ensured concerning the unlawful interference of public authorities and does not include the violation of privacy by private actors. Thirty years later, the members of the Council of Europe adopted the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The legal rules contained in the Convention corresponded to different phases of the processing of data: collection, storage, use and dissemination to third parties.²² According to Bignami (2009), the main idea that hovers above the rules of the Convention is that any type of processing of personal data represents a risk that, if possible, should be avoided:

Each time information about an individual is collected, personal autonomy is put at risk. [...] Although certain types of personal information might appear to be far removed from this private sphere of control and autonomy, once such information is combined, manipulated and disseminated, it might well be revealing of the private sphere.

[...] At the root of data privacy is the principle of autonomy.²³

Bernisson (2021) highlighted that the debate on privacy at the EU level was influenced by the privacy concerns developing in the US in the 1960s and 1970s. Scandals such as the Watergate case on wiretap surveillance, which determined a strengthening of the right to privacy in the US, have urged the European Community to reconsider how technological developments can act on the right to privacy.²⁴

The aspects discussed above can, although by no means exhaustively, explain how the political and historical context in Europe and beyond have shaped from the early years of European cooperation the perception of personal privacy and its place within the European

¹⁹ Lyon cited in Bernisson, “The Public Interest in the Data Society,” 138.

²⁰ European Court of Human Rights, “European Convention on Human Rights”

²¹ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8.

²² Bignami, “Constitutional Patriotism and the Right to Privacy,” 137.

²³ Ibid., 138.

²⁴ See Bernisson, “The Public Interest in the Data Society,” 138.

corpus of law. Although the right to privacy does not formally coincide with the right to protection of personal data, the purpose of the current section was by no means to analyse the fundamental rights as such but to briefly frame how privacy gained more space in the debates and pushed towards more protection of the private life, in contrast with the transparency that flourished in the Swedish society.

2.3 The Issue of the Publication Certificates in Sweden

The Internet opened a new realm, one of innovative media channels expected to facilitate communication and information flow. In Sweden, the regulation of freedom of expression through the FLFE was not considered adapted to these multi-tiered developments that showed great potential for free speech. To address this legal shortcoming and offer space for freedom of expression to thrive in new environments, in 2003, the voluntary constitutional protection for databases through publication certificates was introduced through the amendment of the FLFE. A website or database owner can apply, against the payment of a fee, for a publication certificate through the Swedish Press and Broadcasting Authority, acquiring the same constitutional protection that the traditional mass media (e.g., newspapers, radio, TV publisher) gets through its automatic protection. With a certificate, the website or database is protected by the FLFE. This means, among others, that “you also have the option of publishing data that would not be allowed otherwise under the General Data Protection Regulation (GDPR).”²⁵ This exemption from the rules on personal data processing is made purposely to uphold the right to freedom of expression.²⁶

Nonetheless, this legal ecosystem built on the rationale of unrestricted freedom of expression in Sweden proved itself troublesome when search services giving access to sensitive personal data secured the lawfulness of their activity with the help of the same publication certificates. The data published on these websites can cover a whole spectrum, from name, home address, birth date and phone number, which are available for free, to data on medical conditions and criminal offences, for which one needs to pay a monthly subscription. In the section dedicated to the privacy policy of one of these services, the exemption from the data protection rules is explained it follows:

²⁵ On “Publication Certificate” on the website of the Swedish Press and Broadcasting Authority. Available at: <https://www.mpr.se/en/regulations/publication-certificate/> (last accessed 14/05/2023)

²⁶ Ibid.

The protection of personal data must not conflict with the fundamental right to freedom of expression (GDPR, Chapter 9, Article 85)²⁷. This means that the GDPR's regulatory framework on personal data processing is not applicable if it is considered to interfere with the constitutionally protected right to freedom of expression.

These practices have been received by many as pure privacy violations. The Lexbase case from 2014 is a reflection of the problematic nature of these websites.²⁸ All the judgments from all courts of first instance in the entire country were entered into a database named Lexbase, together with the geographic location of the individuals who had been involved in Swedish criminal trials, enabling everyone to look up the name of an individual and see if he or she committed any crime.²⁹ The information in the database was available to anyone against payment and was an entirely and exclusively commercial enterprise. The case is discussed in depth by Österdahl (2016) who raises an important question, “[...] whether more information implies more democracy or whether there is a point where more information becomes undemocratic.”³⁰

The most recent case that illustrates the paradigm of the protection of personal data versus the principle of openness in Sweden is the case of Verifiera AB. In September 2022, the Swedish Authority for Privacy Protection issued a reprimand and an injunction against Verifiera, which offers a search service for court decisions containing information about compulsory care due to mental illness or substance abuse.³¹ The website had a publication certificate. The case is particularly important as it sheds light on the role of the Data Protection Authorities in Member States in the implementation of the GDPR and in investigating and penalising breaches.

²⁷ Chapter 9, Article 85 in the GDPR provides for exemptions from rules on personal data processing when the right to protection of personal data overlaps with the right to freedom of expression and information: “1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.”

²⁸ See the article of Karlung in Dagens Nyheter: “Vi höjer kraven på kunderna för att säkra det fria ordet” (We raise the demands on our customers in order to ensure free speech).

²⁹ Österdahl, “Between 250 years of free information and 20 years of EU and Internet,” 32.

³⁰ Ibid., 33.

³¹ Swedish Authority for Privacy Protection, “Företag som erbjuder söktjänster för domstols-avgöranden” (Companies offering search services for court judgements)

3. Theoretical Framework

3.1 Social Construction of Knowledge

The sociological approach, which made the subject of Berger and Luckmann's (1991) work, invests "reality" and "knowledge" with meaning by attaching them to the dynamic of human societies. Furthermore, the act of attributing significance to these two concepts by looking at the social context in which they prosper is not a straightforward process that treats "reality" and "knowledge" separately, but an immersion into how the former interacts with the latter and vice versa. This outlook belongs to the discipline called "sociology of knowledge," a discipline that "is concerned with the analysis of the social construction of reality."³²

The sociology of knowledge as elaborated by Berger and Luckmann aims for "a sociological analysis of the reality of everyday life, more precisely, of knowledge that guides conduct in everyday life [...]."³³ The reality of everyday life is not only the world of which the individual alone "makes sense", but an intersubjective world, shared with others using common-sense consciousness, or, more precisely, common-sense knowledge.³⁴ The reality of everyday life reveals itself through objectivation, that is, through the compilation of an order of objects "that have been designated as objects before my appearance on the scene."³⁵ Objectivation takes different forms and signification is one of them. Language represents the paramount product of the process of signification. As Berger and Luckman (1991) state. "[a]n understanding of the language is [...] essential for any understanding of the reality of everyday life."³⁶ Language, like all the other systems of signs, can detach from the immediate spatial and temporal reality, and convey its accumulation of meaning and experience to the next generations. The accumulation of meaning and experience, which involves a common participation in its enrichment, develops into a so-called 'social stock of knowledge',³⁷ which is generationally inherited and serves as a daily tool of reference for the individuals of a society.

³² Berger and Luckmann, "The Social Construction of Reality: A Treatise in the Sociology of Knowledge," 15.

³³ Ibid., 33.

³⁴ Ibid., 37.

³⁵ Ibid., 35.

³⁶ Ibid., 51-52.

³⁷ Ibid., 56.

As mentioned above, the reality of everyday life is an ordered world. Social order as presented by Berger and Luckmann “is a human product, or, more precisely, an ongoing human production.”³⁸ By repetition, human actions become habituated and turn into patterns and routines providing stability in performing daily activities. In this framework, Berger and Luckmann (1991) introduced the concept of “institutionalisation” as “a reciprocal typification of habitualised actions by types of actors.”³⁹ Moreover, historicism, as the solid base of the instantaneous “here and now”, plays an important role in the process of building up the structures of an institution. As such, in order to understand an institution, one has to look into the historical processes that enabled the different levels of its formation: “It is impossible to understand an institution adequately without an understanding of the historical process in which it was produced.”⁴⁰ Being deeply rooted in the past, institutions are experienced by the individual as an objective reality, existing independently of his existence, in an almost atemporal perspective on society and its order.

Holding a meaning that originated in the past and that the individuals living in the “here and now” cannot personally refer to or recall, institutions need mechanisms of legitimation and preservation. Embodying a reality that does not take form as we speak, simultaneously with our everyday actions, but which is transmitted from generation to generation as a well-established tradition, the institutional world is supported by a justificative discourse, integrated into the system of convictions and beliefs of the society. In this case, language becomes the main conveyor of meaning in time and holds the capacity to consolidate the legitimacy of an institution in relation to the members of society:

The original meaning of the institutions is inaccessible to them in terms of memory. It, therefore, becomes necessary to interpret this meaning to them in various legitimating formulas. These will have to be consistent and comprehensive in terms of institutional order if they are to carry conviction to the new generation.⁴¹

Legitimation is by definition a process of justifying and presenting the tradition of an institutional order in a way that will resonate with a generation of individuals whose biography lacks a strong link to the history of an institution. However, legitimation does not imply a static, unmodified view of traditional institutions. Institutions are social products subject to change as the actions carried out by individuals change. Often, what drives changes

³⁸ Ibid., 69.

³⁹ Ibid., 72.

⁴⁰ Ibid., 72.

⁴¹ Ibid., 79.

in the symbolic universe and, consequently in the institutional order, are the changing interests of the social groups: “Frequently an ideology is taken on by a group because of specific theoretical elements that are conducive to its interests. [...] Institutions and symbolic universes are legitimated by living individuals, who have concrete social interests.”⁴²

Vera (2016) focused separately on the three main points that constitute the essence of the theory: *social*, *construction*, and *reality*. The idea of *social* captures the collective dimension of the theory: “The processes that shape our definition of reality are collective; whatever a person considers to be real is something that this individual shares with other members of their own society (i.e. members of their reference group, community, or culture).”⁴³ It is this unity and consensus on the meanings of reality that has a consolidating effect on the social order that reigns and that makes it firm, enduring and self-evident.⁴⁴ The second keyword, *construction*, focuses, on one side, on the building process of a society driven by the individuals’ collective and meaningful performance within it and, on the other side, on the way society is in turn acting upon its subjects and influences them: “Society is built (fabricated, manufactured, produced, constructed) by the meaningful actions of human beings – society, in turn, retroacts upon human beings and creates them.”⁴⁵ Lastly, the concept of ‘reality’, which is “socially constructed”, represents essentially what people consider to be real, or, more accurately what is internalised as being real.

3.2 Theories of Imaginary: Ideology and Utopia

In the paragraph above Vera (2016) refers to ‘reality’ not ‘as it is’ but as it is constructed by a certain social group and that consists of people’s internalised perception of reality. Ricoeur’s idea of imaginaries ascribes to the idea of socially constructed realities. In Bernisson (2021), the idea of imaginaries as sociocultural constructions of reality is emphasised.⁴⁶ In addition, Bernisson (2021) mentioned the role of the imaginaries as a preserver of social identity, consolidated in our memories of society.⁴⁷

⁴² *ibid.*, 141-4.

⁴³ Vera, “Rebuilding a classic: The Social Construction of Reality at 50,” 6.

⁴⁴ *ibid.*, 6.

⁴⁵ *ibid.*, 7.

⁴⁶ See Bernisson, “The Public Interest in the Data Society,” 65.

⁴⁷ *ibid.*

The two main pillars that compose the imaginary and produce its dynamic are ideologies and utopias. This dynamic originates in the interaction between these two elements. As such, the situation where either a ‘total ideology’ or a ‘total utopia’ prevails can be discussed only at an ontological level. In practice, ideologies and utopias coexist within imaginaries and are in a constant state of clash and oscillation.⁴⁸ The concepts of ‘ideology’ and ‘utopia’ were first analysed as a pair by Karl Mannheim in his monumental work from 1929 *Ideologie und Utopie*. Paul Ricoeur continued the discussion on ‘ideology’ and ‘utopia’ in several of his works, further contributing to their understanding and their interaction and interdependence.⁴⁹ As such, the overview presented in the current section will reflect the thoughts and ideas of the two authors.

Mannheim made a distinction between two conceptions of ideology: the particular conception of ideology and the total conception of ideology. The particular conception expresses a form of scepticism towards ideas and representations advanced by an opponent.⁵⁰ The total conception of ideology, on the other side, derives from a macro perspective of society. When invoked in analysis, the total conception aims “to reconstruct the whole outlook of a social group”⁵¹ and “the systematic theoretical basis underlying the single judgments of the individual.”⁵² In the light of the total conception of ideology, Mannheim considers knowledge as a product of our experience in real-life situations and defends its validity in relation to the social context which allowed and contributed to its creation. He mentions the idea of ‘relationism’, which “signifies merely that all of the elements of meaning in a given situation have reference to one another and derive their significance from this reciprocal interrelationship in a given frame of thought.”⁵³ This network of interrelated meanings is neither constant nor identical from one historical period to another, but changes in accordance with a certain social environment at a given time which ‘accommodates’ that specific system of ideas.

In this context, Mannheim establishes that “a state of mind is utopian when it is incongruous with the state of reality within which it occurs.”⁵⁴ Considering its ‘disharmony’ with the

⁴⁸ Ibid.

⁴⁹ Sargent, “Ideology and Utopia: Karl Mannheim and Paul Ricoeur,” 263.

⁵⁰ Mannheim, “Ideology and Utopia,” 49.

⁵¹ Ibid., 52.

⁵² Ibid., 52.

⁵³ Ibid., 76.

⁵⁴ Ibid., 173.

established social order, utopia, unlike ideology, transcends reality and has a disruptive effect on the existing order.⁵⁵ From the perspective of the representatives of a certain order, a utopian perception of existence is unlikely to be realised, an understanding which determines the predominant connotation that the term ‘utopia’ gained in our times, that of a highly unattainable idea.⁵⁶ Mannheim does not limit his conception of ‘utopia’ to an unrealistic scenario, which transcends the current reality and, because of its unsuitability or eccentricity, could not replace it. Instead, he broadens its scope and defines it as utopian “all situationally transcendent ideas (not only wish-projections) which in any way have a transforming effect upon the existing historical-social order.”⁵⁷ In other words, utopia represents an idea or system of ideas that can disrupt and reformate: “By utopia, I do not mean an unreal portrayal of the future but a giving to the world of a meaning which is viewed as a possibility for its future.”⁵⁸

Just as Berger and Luckmann’s (1991) institutions and symbolic universes are legitimated by living individuals who have concrete social interests,⁵⁹ Mannheim’s ideologies and utopias originate as well in groups’ interests and needs. Consequently, when changes in either of the two occur, it is not only a certain psychological state which is challenged but a certain social and economic position as well. Moreover, for Mannheim, the term ‘ideology’ signifies within the frame of historical-sociological research the interest in exploring “when and where social structures come to express themselves in the structure of assertions, and in what sense the former concretely determines the latter.”⁶⁰ This indicates the epistemic relationship between ideology and the sociology of knowledge

For Ricoeur (1984), analysing the collective ‘imagination’ (*l’imagination*) works towards an understanding of the converging point between “our expectations related to the future, our inherited traditions and our initiatives in the present.”⁶¹ He describes this sociocultural imaginary as being double: “Sometimes it operates in the form of ideology, sometimes in the form of utopia [...] With this double imaginary, we touch upon an essentially conflictual

⁵⁵ Ibid.,173.

⁵⁶ Ibid.,176-7.

⁵⁷ Ibid.,183.

⁵⁸ Ibid.,183.

⁵⁹ Berger and Luckmann, “The Social Construction of Reality: A Treatise in the Sociology of Knowledge,” 141-5.

⁶⁰ Ibid., 238.

⁶¹ Ricoeur, “L’idéologie et l’utopie : Deux Expressions de l’imaginaire Social,” 53.

structure.”⁶² Also, Ricoeur (1984) attaches to ideology and utopia two processes which only reinforce the opposition that feeds the existential tensions that they produce: ideology has a constructive function, while utopia has a destructive one.⁶³

Ricoeur (1984) names three main functions of the ideology: dissimulation and distortion of reality, legitimation of dominant authority, and integration in the social memory.⁶⁴ He considers the last one as the most fundamental one. Through its integrative function, ideology becomes “a symbolic structure of the social memory,”⁶⁵ which refers, to consolidate itself, to inaugural events in the remote past. Asking which is more exactly the role of ideology at this rather constitutive level of a social community, Ricoeur (1984) answers: “It is to spread the belief that these founding events are constitutive of the social memory and, through them, of the identity of the community itself.”⁶⁶ By consequence, ideology acts upon the collective memory in such a way that “the value of that initial event becomes an object of belief for the whole group.”⁶⁷ This symbolic consistency provides not only a stable and sustainable self-image to the group but an idealised one, which becomes representative of its existence and continuously reinforces its identity.⁶⁸

Departing from the idea that ideology preserves the (perception of) reality as it is and ‘integrates’ it, utopia is essentially questioning it: utopia becomes the expression of all the possibilities excluded by the current order and an impulse of the imagination to think differently.⁶⁹ While ideology follows religiously a pattern of thinking and a course of action deeply rooted in social practice, utopia proposes alternatives to society. In his essay *Ideology and Utopia as Cultural Imagination*, Ricoeur (1976) ingeniously associates utopia with social subversion, invention and eccentricity, while ideology is the epitome of preservation, integration and repetition.⁷⁰

⁶² Ibid., 53.

⁶³ Ibid., 54.

⁶⁴ “L’idéologie comme distortion-dissimulation” / “L’idéologie comme légitimation de la domination” / “L’idéologie comme intégration dans la mémoire sociale” in Ricoeur, “L’idéologie et l’utopie : Deux Expressions de l’imaginaire Social.”

⁶⁵ Ricoeur, “L’idéologie et l’utopie : Deux Expressions de l’imaginaire Social,” 58.

⁶⁶ Ibid., 58.

⁶⁷ Ibid., 58.

⁶⁸ Ibid., 59-60.

⁶⁹ Ibid., 59-61.

⁷⁰ Ricoeur, “Ideology and Utopia as Cultural Imagination”, 23-27.

4. Methodology

4.1 Methods

4.1.1 Rhetoric Criticism

Since Aristotle's time, rhetoric has made the subject of numerous treaties and essays. It is, however, only recently that the study of rhetoric has entered the academic field, aiming through criticism an understanding of the rhetoric phenomena in the age of developing mass media, modern propaganda, and the social movements that marked the twentieth century.⁷¹ In the second half of the century and the first years of the 21st century, scholars began shifting their focus from the speaker and its influence on the social context to the way that culture and history shape the art of rhetoric.⁷²

Rhetoric is not a mere delivery of information through spoken words. Without disregarding its informative role, rhetoric takes its specificity from the persuasive element that it contains. In Kuypers and King (2008) rhetoric has a rather broad meaning and refers to all "[t]he strategic means of communication, oral or written, to achieve specifiable goals."⁷³ This definition encompasses two main ideas. One is that rhetoric is of a strategic, intentional nature, the other is that the intentions envisaged are to be reached through language.⁷⁴ Language is a conveyor of meanings through symbols. Words, spoken and written, are symbols that represent a certain unit of meaning.⁷⁵ Sonia K. Foss (1996) gives the following definition: "Rhetoric means the action humans perform when they use symbols to communicate with one another."⁷⁶ Other scholars have gone even further, explaining that rhetoric contributes to the enactment of change in a society, a view which is shared by Gerard Hauser (2002):

In its most basic form, rhetorical communication occurs whenever one person engages another in an exchange of symbols to accomplish some goal. It is not communication for communication's sake; rhetorical communication, at least implicitly and often explicitly, attempts to coordinate social action.⁷⁷

⁷¹ See Kuypers and King, "What is rhetoric?", 3.

⁷² Ibid., 3-4.

⁷³ Ibid., 4.

⁷⁴ Ibid., 4.

⁷⁵ Ibid., 4.

⁷⁶ Foss, "The Nature of Rhetorical Criticism," 4.

⁷⁷ Hauser, "Introduction to Rhetorical Theory," 2-3

We have briefly discussed what rhetoric is and how it is defined by some scholars. Next, to enter into the methodological realm, it is necessary to introduce the notion of ‘criticism’ as well. Kuypers (2008) explains that “[w]hen we critique instances of rhetoric, often called *rhetorical artefacts*, we are allowing ourselves to take a closer, critical look at how rhetoric operates to persuade and influence us.”⁷⁸ Based on this affirmation, criticism can be seen as a form of analysis, a view which is shared by Brockriede (1974) who states: “By ‘criticism’ I mean the act of evaluating or analysing experience.”⁷⁹ Rhetorical criticism makes use of various methods although rhetorical scholars agree on three common main components. First, it involves a description of the subject matter, its medium, and its form.⁸⁰ Second, criticism requires an interpretation and argues for his hypothesis using text-based evidence.⁸¹ Third, the critic issues judgements about the rhetoric artefact.⁸²

Rhetorical criticism serves several purposes, but for this paper only one will be named here. What the critic attempts to do, among others, by applying rhetorical criticism on a text is to “understand how texts represent histories, cultures, and politics.”⁸³ The rhetorical artefacts are not created independently of the historical, cultural, or political context of a community, but are “part of a larger ecosystem of ideologies.”⁸⁴

4.1.2 McGee’s Ideographic Criticism

Rhetorical criticism covers a wide umbrella of methods. For the present case, the paper will preponderantly rely on McGee’s Ideographic Criticism.

McGee’s (1980) hypothesis in his article *The ‘Ideograph’: A Link Between Rhetoric And Ideology* is that “[i]f a mass consciousness exists at all, it must be empirically ‘present’, itself a thing obvious to those who participate in it, or, at least, empirically manifested in the language which communicates it.”⁸⁵ The “mass consciousness” that McGee (1980) refers to is tightly linked to the concept of “ideology”. ‘Ideology’, associated here mainly with the Marxist materialist approach, gains a fundamentally pejorative connotation at McGee, which analyses it together with ‘myth’, a product of the symbolist approach: “Both ‘myth’ and

⁷⁸ Kuypers, “Rhetorical Criticism As Art”, 13.

⁷⁹ Brockriede, “Rhetorical Criticism as Argument,” 165.

⁸⁰ See Young, “Rhetorical Method,” 1503.

⁸¹ Ibid., 1503.

⁸² Ibid., 1503.

⁸³ Ibid., 1504.

⁸⁴ Ibid., 1504.

⁸⁵ McGee, “The ‘Ideograph’: A Link Between Rhetoric And Ideology,” 4.

‘ideology’ presuppose a fundamental falsity in the common metaphor which alleges the existence of a ‘social organism.’”⁸⁶

Although the present paper does not take its inspiration from the Marxist notion of ideology, the idea advanced by McGee that “an ideology is specifically rhetorical”⁸⁷ is a relationship which will be further explored. What McGee understands by rhetoric is highly similar to Hauser’s (2002) definition of rhetoric, that is, in very simple terms, a communication that enables social change or action. For McGee (cited in Lee, 2008), “rhetoric is a natural social phenomenon in the context of which symbolic claims are made on the behaviour and/or belief of one or more persons, allegedly in the interest of such individuals, and with the strong presumption that such claims will cause meaningful change.”⁸⁸ Additionally, in these rhetorical transactions, we can identify and recognise the world “as it is” (through our subjective lens) and trace the “ideological commitments” that we share.⁸⁹ To this, Lee (2008) adds: “As these commitments are modified, the messages reflect these changes. We can map the ideological shifts in our society by paying attention to these messages.”⁹⁰

Within this context, McGee’s concept of “ideograph” provides the link between rhetoric and ideology.⁹¹ According to Stassen-Ferrera’s (2017) definition, the ‘ideograph’ is “a term used to describe words that illustrate or reveal cultural ideology, collective thought, and a system of ideals and ideas. [...] an ideograph sheds light on the political and social consciousness of a collective of people.”⁹² The potential impact that these words could have on an audience or, even more, on a social order at large, should not be neglected. McGee expresses this idea when he affirms emphatically: “Though words only (and not claims), such terms as ‘property’, ‘religion’, ‘right of privacy’, ‘freedom of speech’, ‘rule of law’ and ‘liberty’ are more pregnant than propositions ever could be. They are the basic structural elements, the building blocks of ideology.”⁹³

⁸⁶ Ibid., 2-3.

⁸⁷ Ibid., 4.

⁸⁸ McGee, “A Materialist’s Conception of Rhetoric,” 38.

⁸⁹ See Lee, “Ideographic Criticism,” 293.

⁹⁰ Ibid., 293.

⁹¹ Ibid., 295

⁹² Stassen-Ferrera, “Ideographs,” 682.

⁹³ McGee, “The ‘Ideograph’: A Link Between Rhetoric And Ideology”, 6-7.

McGee (1980) specifies that ideographs are a group of words “purely descriptive of an essentially social human condition.”⁹⁴ Ideographs describe a ‘state of things’ in a given social context and are filled with meaning only through concrete usage, a process which McGee (1980) expressively explains: “No one has ever seen an ‘equality’ strutting up the driveway, so, if ‘equality’ exists at all, it has meaning through its specific applications. In other words, we establish a meaning for ‘equality’ by using the word as a description of a certain phenomenon.”⁹⁵ Moreover, an ideograph is filled with a certain meaning when it interacts with another ideograph and “it is defined tautologically by using other terms in its cluster.”⁹⁶ McGee introduces in his analysis a synchronic and a diachronic dimension. While the synchronic dimension looks at how ideographs interact with each other - congruously or incongruously - in the present time of the rhetoric act, the diachronic dimension follows the changing ideological commitments through time.⁹⁷

Lee (2008) points out a characteristic of the ideological analysis, which is of great relevance for the present study, that is, the focus of the critic on the evolving and changing social order mirrored in the rhetoric expression, rather than on the rhetoric discourse as a vector of change. In other words, “the discourse itself is understood as the effect rather than the cause. [...] When ideographs change, [...] this reflects a change in ideology.”⁹⁸

4.2 Selection of Material

The question of freedom of expression in the context of new media channels that reinvent the way communication, information flow and opinion formation happen in the online world has been debated at the political level since the 1990s. Already in 1994, a committee was appointed to investigate the conditions of possible constitutional protection for new forms of media. The study was called *Constitutional Protection for new media*⁹⁹ and became a point of reference for future reflections on the topic. The corpus of official documents (committee reports, legislative proposals, motions of the Parliament, review of official government

⁹⁴ Ibid., 8-9.

⁹⁵ Ibid., 10.

⁹⁶ Ibid., 14.

⁹⁷ See Lee, “Ideographic Criticism”, 297.

⁹⁸ Ibid.

⁹⁹ Swedish Government, “Grundlagsskydd för nya medier.”

inquiries by stakeholders)¹⁰⁰ that touched upon the topics of voluntary constitutional protection through publication certificates and of websites making available personal data of subjects is prodigious and will be by no means covered by the present paper.

The selection made for the current analysis consists of the parliamentary debates and motions of three proposals of amendment in the FLFE.

4.2.1 Three Proposals for Amending the Fundamental Law on Freedom of Expression

For the thesis, I decided to focus on three key-moments in key moments in the lifecycle of the Swedish publication certificates. First, the constitutional amendment of 2001, when voluntary constitutional protection through publication certificates for ‘non-traditional’ forms of media was introduced in Chapter 1 Article 4 of the FLFE. Second, the focus will shift to the proposal for constitutional amendment of 2016, when the government has proposed that it should be possible to ban search services that contain personal data on criminal offences. The third moment is the proposal of 2022 for another amendment of the FLFE, when the Riksdag proposed once again that the constitutional protection for certain search services that publish personal data on criminal offences should be limited, taking into account the protection of personal privacy.

Thus, 2001, 2016, and 2022 are particularly significant years as they mark the adoption of legislative proposals aiming to modify the FLFE with regard to publication certificates. Intervening with changes in the content of individual fundamental laws of a nation does not only imply a re-evaluation of legal provisions, but a change in “the free formation of the state will.”¹⁰¹ This idea is closely related to one of the meanings given by Schmitt (1928) to the concept of ‘constitution’:

“the principle of the dynamic emergence of political unity, of the process of constantly renewed formation and emergence of this unity from a fundamental or ultimately effective power and energy. [...] Political unity must form itself daily out of various opposing interests, opinions, and aspirations. According to the expression of Rudolf Smend, it must “integrate” itself.”¹⁰²

¹⁰⁰ Called *Remissvar* in Swedish.

¹⁰¹ Schmitt, “Constitutional Theory,” 62.

¹⁰² *Ibid.*, 61.

In other words, when the question of ‘revision of individual constitutional provisions’¹⁰³ is on the table, the political unity emerging from the state will, which becomes the collective form of individual will, is undergoing a reorganisation. Simply said, the need for changes in fundamental laws can be the effects of changes in society and its beliefs, “interests, opinions, and aspirations,” a relationism that suits the purpose of the thesis.

4.2.2 The Relevance of Parliamentary Motions and Debates

In relation to these three above-mentioned events, the ideographic criticism will be applied to the protocols of parliamentary debates following the adoption of the government’s proposal for amendments in the FLFE and to four motions advanced by Members of the Riksdag in the context of the same proposals. The motions were selected based on their relevance to the topic of publication certificates and search services containing personal data.

Ilie (2021) affirms that “[i]n many representative democracies, major conflicts are normally unfolding in the parliamentary arena with the political parties as the standard bearers of the conflicting sides.”¹⁰⁴ Similarly, Abercrombie and Batista-Navarro (2020) argue that “Debate transcripts from legislatures [...] provide access to a wealth of information concerning the opinions and attitudes of politicians and their parties towards arguably the most important topics facing societies and their citizens.”¹⁰⁵ For both reflections, the idea that parliamentary debates deal with topics of great interest to society at a certain time is valid. Also, both argue that political parties and politicians take certain stances representing different attitudes on the debated issue.

However, the question is: based on what criteria or interests do political parties build their position and thus, their discourse? Taking into consideration the sociological perspective of this paper, I will refer to the run-from-below representational model that establishes that “public opinion is an exogenous force in the representative democratic system.”¹⁰⁶

¹⁰³ Ibid., 80.

¹⁰⁴ Ilie, “Discussion, Dispute or Controversy?”, 237.

¹⁰⁵ Abercrombie and Batista-Navarro, “Sentiment and position-taking analysis of parliamentary debates: a systematic literature review”, 245-6.

¹⁰⁶ Esaiasson and Holmberg. “Representation from above: Members of parliament and representative democracy in Sweden,” 5.

That being the case, it can be argued that, while analysing legislative debates, one can sense the will of the electorate and the attitude of the society on a certain matter as well. Although one cannot neglect the influence of other factors such as elite interests, the idea exploited here is that, when the representatives of the citizens debate, the discourse will reflect, for instance, a changing sociocultural imaginary of openness and personal privacy.

Parliamentary motions, which are proposals forwarded to the Parliament by the members (or at least one member) of the Parliament, complement the actual debates and their content and rhetoric are often reiterated and reinforced during the debate by one of its authors.

4.3 Research Corpus and Sample Procedure

Guided primarily by the chosen method, ideographic criticism, the first step taken towards the analysis of the three debates and four motions selected was the identification of ideographs. The terms and syntagms that were designated as ideographs belonged either to the semantic field of openness (e.g., ‘freedom of expression’, ‘freedom of the press’, ‘opinion formation’, and ‘principle of publicity’) or to the semantic field of privacy (e.g., ‘privacy’, ‘personal privacy’). ‘Democracy’ also played the role of ideograph as it is generally revealing in terms of a certain system of ideals and ideas and directly related to both the idea of openness and privacy. The ideographs were analysed separately, within their ‘textual environment’ and in interaction with each other (synchronically). Attention was also given to other words clustered around ideographs, which were indicating different nuances and were adding meaning or further reinforcing an idea (e.g., ‘intrusion’, ‘violation’, ‘protection’). During the analysis, ideographs will appear between angle brackets, on the model <ideograph>.

Considering the European dimension of the paper, the analysis will also follow the EU presence, represented by reference to Directive 95/46/CE, the EU General Data Protection Regulation, the European Commission (the Commission), or the Court of Justice of the European Union.

The material selected (parliamentary motions and debates) is solely available in Swedish. The extracts which will serve the analysis will be translated into English.

4.4 Limitations

The few rhetorical artefacts represented by parliamentary debates and motions that will be put under the magnifying glass of ideographic criticism cannot account for a comprehensive and complete image of the place that openness and privacy occupy in Swedish society. Nonetheless, this undertaking aims to show that some of the dynamics that animate the social imaginary in Sweden and that take their energy from two opposing forces, ideology and utopia, can be identified on the Parliament's 'performance scene'. Also, the results would have benefited from the inclusion in the analysis of some of the feedback that different actors and stakeholders have submitted with the occasion of the three proposals (generally known as *remissvar*). The input was received from both public authorities (national, regional, local) and the private sector, including media outlets and even enterprises driving the disputed search engines. Although the perspective would have been enriching, it would have exceeded the modest dimensions of the paper.

Another fully acknowledged limitation is that parliamentary discussions can be also highly politicised and that some of the opinions and ideas expressed reflect certain political and party-specific interests. The analysis disregarded the bias that could have originated from the adhesion of parliamentarians to certain political groups, assuming that the political conflicts indicate disagreements in the nuances of the issue discussed, not in its substance. As such, the analysis focused exclusively on elements that, when brought together, could indicate a general social attitude towards openness and privacy.

5 Results

5.1 The First Proposal for Constitutional Amendment

5.1.1 Context: A More General and Inclusive Constitution

In 1999, the Swedish Government decided to appoint a parliamentary committee with the task of analysing the need for and the conditions for a more "technically general constitutional regulation of freedom of expression."¹⁰⁷ The report of the committee comes as a response to a new 'reality' that needs to be accommodated: "The use of the Internet has had

¹⁰⁷ Swedish Government, "Yttrandefrihetsgrundlagen och Internet," 1.

an enormous impact in recent years, and the Internet can now be used for traditional telecommunications services as well as for new types of services.”¹⁰⁸ The report emphasises the impact that these new channels of communication have on the application of the right to freedom of expression and information. The Internet was revolutionising the capacity to spread information and opinion to a large public:

The new technology has drastically increased people's opportunity to use freedom of expression and reach many with a message, and it has been said that the Internet is as crucial a step in the development of the possibility to convey opinions, information and messages as the so-called Gutenberg revolution, i.e., the breakthrough of printing in Europe in the 15th–16th centuries.¹⁰⁹

Considering the new mass-communication channels where freedom of expression could have been manifested, the then provisions of the FLFE were assessed as insufficient for protecting such a wide variety of new services and platforms. The goal became to achieve protection for freedom of expression that is designed in such a way that the constitution can accommodate new forms of media without continuous amendments.¹¹⁰ In line with this strategy, the committee made several proposals which would serve the purpose of a more general, inclusive, and flexible FLFE. One of the proposals concerned “a voluntary constitutional protection according to the database rule”. The proposal included that the actors other than the traditional mass media companies, already subject to automatic constitutional protection, shall be able to obtain voluntary constitutional protection by applying for and being granted a publication certificate.¹¹¹

Despite an expressed concern for personal privacy issues that might occur, the committee dedicates a section to ways in which the exceptions provided in Directive 95/46/EC¹¹², which was in force at that time, could be exploited in the favour of the FLFE and the FPA. The report is invoking several legal detours and explanations that might exempt the two Swedish fundamental laws from the scrutiny of the EU legislator. Article F of the Treaty on the European Union¹¹³, the great importance of free opinion building in the Swedish constitution,

¹⁰⁸ Ibid., 137.

¹⁰⁹ Ibid., 218.

¹¹⁰ Ibid., 219.

¹¹¹ Ibid., 24–25.

¹¹² According to the committee’s evaluation, the possibility of exceptions in the interest of freedom of expression according to Article 9 in the Data Protection Directive is wider than what the wording there seems to suggest and the expansion of the constitutional protection may be considered covered by this possibility of exception.

¹¹³ “The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.”, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11992M/TXT>

the interpretation of “journalistic purposes or the purpose of artistic or literary expression”¹¹⁴ from the perspective of the means of expression rather than the content of the communication or its quality, or the broad implementation of the concept of freedom of expression by the European Court of Human Rights in its judgements are only a part of the arguments that the report resorts to.

Following the investigation carried out by the parliamentary committee, the Swedish Government forwarded a legislative proposal that reflects the content of the report. The proposal included the extension of the scope of the FLFE through, among others, the introduction of voluntary constitutional protection using the application for a publication certificate. The proposal was submitted to vote and a first decision was taken in favour the voluntary constitutional protection following the rule of the database.

5.1.2 Analysis: Traces of Ideology and Utopia through Ideographs

Motions

In Swedish parliamentary procedure, motions, which are proposals forwarded to the Parliament, are submitted by the members (or at least one member) of the Parliament either during the usual yearly ‘motion time’ or as a response to a legislative proposal forwarded by the Government on a certain matter. For the first constitutional amendment, the analysis will be based on two motions which will be further referred to as M1 and M2.

The first motion (M1), submitted by eleven Members of the Parliament, advocates for the important role that mass media is playing in the free and diverse opinion formation in a democratic society. This position is in line with the rationale behind the constitutional amendment, that is, a better cover for emerging mass media technologies. The ideographs which will be closely looked into are <freedom of expression>, <democracy>, and <opinion formation>, which, as we will see, are highly coordinated and dependent on each other.

The text of the motion begins with a simple but powerful statement that takes the form of a generally accepted fact, identifying thus the presence of the ‘social consciousness’: “In

¹¹⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, Article 9.

Sweden, there is a strong protection for freedom of expression.”¹¹⁵ The association between <freedom of expression> and protection is significant, revealing an active effort to shield and preserve it. The constitutional protection ensured by both FPA and the FLFE implies that “the public may not intervene against the abuse of freedom of expression or against participation in it other than in the cases and the order prescribed in these two basic laws.”¹¹⁶ Thus, there is no prevention against abuse, only eventual sanctions once the abuse was committed, if the Criminal Code applies in that particular case.

The second paragraph is also introduced by a powerful statement that dominates it, making use of a metaphor to emphasise its meaning: “Information exchange and dialogue are the lifeblood of democracy.”¹¹⁷ <Democracy>, which represents in Sweden both a ‘reality’ and a ‘state’ to be maintained by concrete actions and efforts, is conditioned by ‘information exchange’ and ‘dialogue’. They are not only important but *vital* (‘lifeblood’). As information exchange and dialogue are simply freedom of expression put into practice, it would be safe to admit that <freedom of expression> is the ‘lifeblood’ of <democracy>. After stating what can epistemologically be considered a ‘general truth’, the motion moves to the ‘real-life’ context, where changes occur and need to be accommodated by having as a principle the idea expressed by the general truth: “When media forms change, the opinion formation, which is the basis of democracy, is of course affected.”¹¹⁸ Here, one can sense a relationship of causality including two ideographs - <opinion formation> and <democracy>. The change in the media landscape produces a change in <opinion formation>, which in turn influences <democracy>. Media becomes, thus, a factor of influence for <democracy> by acting on <opinion formation>.

This strong interrelation between <freedom of expression>, <opinion formation>, and <democracy>, which repeats itself throughout the whole motion, could be labelled as a shared knowledge in society, which becomes the norm of the social reality. Nevertheless, this belief builds on a certain conception of democracy that the motion presents:

Democracy is not fundamentally a formal approach that specifies electoral systems and distribution of power. The very foundation of a democracy is the basic values that its citizens

¹¹⁵ See Swedish Riksdag, “Yttrandefriheten i Sverige” (Freedom of Expression in Sweden)

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

have, are governed by and cherish. Democracy is above all about human dignity and human integrity.¹¹⁹

The authors of the motion formulate a value-based definition of <democracy>. According to them, the essence of democracy does not reside in the characteristics that it holds as a form of government, but in the set of values that ‘govern’ the people and that the people hold tight to. Using the terms specific to the sociology of knowledge, it can be said that the real values of democracy are ‘legitimated’ and ‘integrated’ in society. Should the analysis go further in the same spirit of the sociology of knowledge, based on the authors’ view of democracy, it can be deduced that democracy itself is a social construct that needs to be fully assimilated by the group through adherence to its values. Saying that democracy is socially constructed means that it is also relative and that different contexts can influence how democracy develops and looks. However, the authors conclude with a broad humanistic definition of <democracy>, whose core is human dignity and integrity. In this context, <freedom of expression>, the driving force of <opinion formation>, contributes to the consolidation of human dignity and human integrity.

In this integrity and dignity-based democracy, the role played by the media, they say, becomes more debated and assessed. The authors make use of the impersonal passive to talk about the recent media developments registered globally that are out of people’s and decision-makers’ control and that will nonetheless have an impact on how democracy functions: “It is said that we are on our way into an information and knowledge society. Media development has been enormous over a long succession of years. Only a naive statistician would argue that this process is only of quantitative importance.”¹²⁰ The predictive tone and the use of the adjectives “naive” and “enormous” increase the impact of the statement. Also, the observation that this direction has been already paved “over a long succession of years” and will continue highlights the need for change and adaptation even in Sweden. The unavoidable and rapid advance towards an “information and knowledge society” requires an evaluation of how freedom of expression and opinion formation will be affected.

The free opinion formation becomes, as the authors sustain, the main beneficiary of the spread of mass media in society. Through facilitated access to information, people can more

¹¹⁹ Ibid.

¹²⁰ Ibid.

easily take a stand on certain matters and build their judgement: “The media should therefore provide the citizens with such information that they can freely and independently take a stand on issues relating to society's affairs.”¹²¹ The concept of information is a central one in M1, being described as both the material that mass media puts into circulation and the material that fuels opinion formation. However, no further specifications on the nature of the information, its source or its aim are made. Moreover, for this transaction between mass media and people to function properly, the authors claim that mass media should be guaranteed independence and freedom to conduct its activity according to its agenda: “Part of the free formation of opinions is that the mass media can function as independent actors and push their lines in the social debate.”¹²²

An additional argument brought forward by M1 is the ability of mass media to foster public transparency and accountability, fighting against power abuse:

[...] Critical scrutiny in the mass media is central to free opinion formation and democracy. The mass media can freely and independently scrutinize the influential actors in society. A review carried out by multifaceted mass media counteracts abuse of power. A more just and nuanced picture of the rulers in society can thus emerge.¹²³

<Democracy> and <opinion formation> are associated with the potential of mass media to maintain openness in public affairs and stir debate on the actions of those who are accountable in society. This idea is in line with Rosengren’s (2019) metaphor of “power to the people” in relation to the principle of public access.

M1 puts into context three ideographs that interact in a way that does not produce tension but rather complementarity. At a closer look, the dominant ideographs are <democracy> and <opinion formation>, followed by <freedom of expression> which appears only once. One could say that <freedom of expression> was downplayed by the other two. In fact, <opinion formation> took over the meaning borne by <freedom of expression>. Simply said, <opinion formation> becomes a replacement for <freedom of expression>. Not in a literal, synonymic way, but in a way meant to show that <opinion formation> is the very essence of <freedom of expression>, its main bi-product. By associating <opinion formation> with information exchange, dialogue, social debate, critical positioning towards social issues, and public scrutiny, <freedom of expression> becomes the bearer of the idea that being able to build free

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

opinions and to discuss them and that mass media only provides data and information that are to be critically and independently reflected on. This view on <freedom of expression> is relevant for a period in which the attitude towards IT, the Internet, and the media were optimistic. The potential of the new technologies for the spread of information and knowledge was looked upon with enthusiasm by people, businesses, and decision-makers alike.

The second motion (M2), submitted by nine Members of the Parliament, shares a similar vision as M1: freedom of expression needs to be strengthened in Sweden and the benefits of the Internet should be taken advantage of for the enhancement and facilitation of the public debate. For this part, the analysis will concentrate on <freedom of expression> as an ideograph and will follow its manifestations.

In the first paragraph, <freedom of expression> is framed as an area that requires amelioration and extension of scope. This issue becomes more topical with the rise of IT developments and the Internet, which “creates completely new opportunities for people to communicate and make their voice heard, increasingly independent of established media.”¹²⁴ The association between <freedom of expression> and the Internet and mass media constitute a repetitive theme that reflects the ambitions of the time: how can we create more space for the Internet and new media in the legal landscape of freedom of expression?

The motion pictures <freedom of expression> together with the principle of publicity (*offentlighet*) as surrounded by multiple opposing powers that have diminished its force of action: “EU directives, legitimate ambitions or a conscious strategy.”¹²⁵ All these factors have acted towards the same result - “a waning public conversation.”¹²⁶ The motion argues that the trend needs to be reversed and that a stronger <freedom of expression> is “decisive.”

The Internet, which “enables completely new forms of communication,”¹²⁷ has a revolutionary impact on society and the authors write that “[f]ew technological breakthroughs

¹²⁴ See Swedish Riksdag, “Med anledning av prop. 2001/02:74 *Yttrandefrihetsgrundlagen och Internet*” (With the purpose of proposal 2001/02:74 *The Fundamental Law on Freedom of Expression and the Internet*)

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

have had such potential to renew and strengthen freedom of expression.”¹²⁸ It is a powerful statement built around a couple of keywords: “breakthroughs”, “renew”, “strengthen”, and “freedom of expression.” <Freedom of expression> becomes surrounded by terms that belong to the semantic field of reform, indicating the need for change and improvement for the good of freedom of expression.

Of great relevance for the analysis is the concern that the authors of the report express regarding the negative impact that the European data protection legislation has on the good functioning of freedom of expression in Sweden. What the authors encourage about Directive 95/46/EC is not an integrative approach, but a defiant one, oriented towards ways of blocking the external influence from disrupting the internal, national order: “Instead of challenging the directive based on Swedish fundamental laws, the government thus chooses to simply bow to the directive and refrain from asserting central democratic values.”¹²⁹ The statement is extremely telling, not only of the question of freedom of expression and openness in Swedish society but also of the overall perception of the European integration process. Based on this phrase, one can sense that the authors place the EU Directive for Data Protection and the “central democratic values” in a dialectical relationship, with the former affecting the latter. Although there are no further details on what these values are, it can be assumed that they derive from the Swedish fundamental laws. Here, for the first time in the analysis, one can identify the tension between ideology, represented by the central democratic values of Swedish law, one of them being freedom of expression, and utopia, represented by the subversive power of European law.

The authors continue by making a conciliatory remark: “This of course means that people's integrity must be protected and that certain opinions are still unacceptable in a democratic society.”¹³⁰ However, they believe that the derogations which *Personuppgiftslagen* made with regard to the overlap between the protection of personal data and freedom of expression are not enough. The data protection legislation in Sweden, a product of Directive 95/46/EC still suffocates freedom of expression. They conclude: “In our reasoning, we have consistently used [Personuppgiftslagen] to exemplify a worrying development in the view of freedom of expression. It seems clear to us that [Personuppgiftslagen] should be abolished, as it goes

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

against basic principles of freedom of expression.”¹³¹ The conclusion further deepens the gap between <freedom of expression> and the protection of personal data. The tone is one of concern and discontent and the verdict is rather radical, conveying an immediate need for change: the data protection legislation should be repealed, as it puts in danger freedom of expression.

Debate

Proposal 2001:02:74 was debated and voted on by the Parliament. The debate was made public using a protocol, which the present section seeks to analyse in search of ideographs. The analysis will focus on the intervention of six Members of the Parliament engaging in discussion as representatives of their respective parties. During the analysis, they will not be referred to by their name, but as MP1, MP2, MP3, MP4, MP5, and MP6. The ideographs that will make the subject here are: <freedom of expression>, <opinion formation>, <personal privacy>, and <democracy>.

MP1 raises from the very beginning the concern of compliance of the proposal with the EU Data Protection Directive. MP1 openly addresses the risk of conflict between voluntary constitutional protection with personal privacy. The fact that this tension is not evident yet and represents a latent issue is confirmed by a sense of worry about the unpredictability of the future: “The rapid development in the field of computer technology means that the effects on personal privacy are in many cases unpredictable.”¹³² <Personal privacy> gradually creates a cleavage in the seemingly unbreakable social institution of freedom of expression.

Nevertheless, the shadow of danger coming from forces opposing the unbothered prosperity of freedom of expression in a changing society did not seize the discourse yet. The priority is still to create a legal environment that will permit the freedom of expression to thrive and cover the new communication channels born with the Internet. In this context, <opinion formation> remains the main argument for extended constitutional protection, as MP2 points out by reference to the report of the Committee on the Constitution: “In its writings, the committee has pointed out that the free opinion formation is a starting point for an expansion

¹³¹ Ibid.

¹³² See Swedish Riksdag, “Riksdagens protokoll 2001/02:106”

of the constitutionally protected area, which in itself contains prohibitions against obstructive measures.”¹³³

The idea that <freedom of expression> needs to be kept safe and unaltered is dominant. MP3 affirms: “Freedom of expression must never be taken for granted.”¹³⁴ The need to guard this institution can be also noticed in the frequent association between the ideograph <freedom of expression> and the word “protection”. MP3 continues: “The current legislation is not adapted to new technology and to the opportunities it provides to extend freedom of expression to more and more people.”¹³⁵ Once again, the necessity of the current legislation to transform is renewed. <Freedom of expression> is discussed, exactly as in the case of M1, as an area which crosses an age of high potential for development and enhancement.

Further on, MP3 uses <freedom of expression> within the syntagm “the real freedom of expression”:

The government speaks in other contexts that it wants to increase real freedom of expression. It is invoked as support for demands for reduced ownership concentration. But if you don't want to extend the real freedom of expression to new media, such motives sound false.¹³⁶

The mention of “real freedom of expression” implies the existence of fake or unauthentic freedom of expression. On which criteria one can distinguish between the two or categorise one as being in one way or another is unclear. However, this choice of syntagm indicates the relativity of freedom of expression as a value and the fact that ‘true’ and ‘authentic’ freedom of expression, as per the perception of the speaker or of the social group he represents, is yet to be achieved in Sweden. MP3 explains what they believe to be the essence of <freedom of expression>: “Freedom of speech is about the right to question, criticise and debate, which also means that even statements that can be perceived as offensive or hurtful must be allowed.”¹³⁷ By looking closely, this definition of <freedom of expression> has in its centre the process of reflection and analysis. All three verbs describing the right to freedom of expression - “question”, “criticise”, and “debate” - entail a stage of thinking deeply and carefully about the information that reaches us and, based on this rumination, a series of personal judgements are issued. In other words, it is a process of ‘opinion formation’. What is

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

more, <freedom of expression> is the opposite of censorship. <Freedom of expression> is an absolute right, which should not be limited by what is considered to be correct or incorrect, moral or immoral, offensive or not.

Further, framing the Swedish openness within its historical setting to provides new perspectives. MP5 makes use of history to invoke the beginnings and the evolution of freedom of the press and of expression in Sweden and the oppression and limitations that it endured under successive rulers and regimes:

We have the world's oldest regulation for freedom of the press. It was established in 1766 after the art of printing had become part of the existence of communication in our country. There is nothing so fundamentally vital to our democracy as a vibrant freedom of speech and press. All kings since the time of Gustav Vasa and almost all state powers have at some point tried to restrict or change freedom of speech and of the press, especially the freedom of the press. [...] Freedom of the press has changed many times since 1766. In 1809, 1810, and 1812, after our great war loss against Russia when we lost Finland and changed our constitution so radically that we implemented a new freedom of the press ordinance. It has changed on several occasions since then. Not least during the war years 1939-1945 and 1949 we received new restrictions on the freedom of the press, [...] the government at the time considered that one should not be allowed to participate in opinion formation that could violate the security of the Kingdom of Sweden.¹³⁸

MP5 begins their intervention by impactfully stating that the Swedish people, the “we”, has the oldest freedom of the press regulation in the world. As a pioneer country in this field, which flourished with the rise of the art of printing, Sweden owes its democracy (“our democracy”) to two pillars: <freedom of speech> and <freedom of the press>. Nevertheless, what MP5 seeks to put into evidence is that these two did not fully thrive throughout the years, but have always been weaponized and became subject to control, censorship, and restriction. MP5 gives the example of Gustav Vasa who already during his ruling tried to monopolise freedom of the press, being the first in a long row of kings who attempted to limit in one way or another freedom of the press, and thus, of expression. Moreover, freedom of the press has undergone a series of amendments and readoptions, has been reformulated after Sweden’s loss of Finland to Russia and has been severely shrunk during the Second World War.

Going back to Berger and Luckmann’s Social Theory of Knowledge and the role played by historicism in the process of institutionalisation, one can sense the attempt at legitimisation. MP5 presents the tradition of an institutional order for a generation where the institutions of

¹³⁸ Ibid.

freedom of expression and freedom of the press in Sweden are experienced by individuals as existing independently of their existence and which go back to a remote past that they cannot directly identify with. Based on Ricoeur's theory, this process of justification and recollection of moments that mark the weather-beaten beginnings of openness in Sweden is also an ideological proceeding. MP5 makes use of social memory and brings into the present inaugural events that gave birth to the freedom of the press and freedom of expression in Sweden. The journey back to the origins of these two rights, deeply anchored into the history of the country, creates stability and consistency and transforms a review of some events and dates that no one lived into a belief, the belief that freedom of the press and freedom of expression are pure products of Swedish society. The idea that regimes have systematically tried to silence or censure the Swedish people for hundreds of years is rather empowering and mobilising. The message becomes that freedom of expression and freedom of the press are rights that Sweden has fully gained only recently and that those currently responsible for their proper implementation should understand their mission and work towards consolidation and adaptation to modern times requirements.

The stance taken by MP5 is obviously in support of the introduction of publication certificates. The concern that they nevertheless express is the risk of crimes and extremism that can grow through the extension of the freedom of expression on the Internet. MP5 emphasises the unforeseeable developments that voluntary constitutional protection can open the way for: "We need to follow this carefully so that it does not go in the wrong way. We are all a little unsure of where it might lead because we don't know today who will apply for a publication certificate."¹³⁹

Finally, I will conclude the analysis of the debate with a short intervention of MP6, which paves a smooth transition to the discussion on the second constitutional amendment. Despite the general agreement on the importance of an "open society", which MP6 and their party is attached to, they are worried about the implications that the amendment has on personal privacy, which they "place an equally strong emphasis on,"¹⁴⁰ and reinforces the necessity of a separate investigation in this regard. Again, <personal privacy> appears as a potentially disruptive force of the well-established and generally accepted dominance of openness.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

5.1.3 Conclusions

By looking closely at the ideographs <freedom of expression>, <democracy>, <opinion formation> and <personal privacy>, the parliamentary discussions on the extension of constitutional protection through publication certificates emanate a general willingness to enhance, promote and consolidate freedom of expression.

Two main driving forces act together towards this ideal that the Parliament was embracing. One is the ‘revolution’ of the Internet, comprising a great potential for the communication field and the mass media landscape. This could be categorised as an external factor, evolving organically with the progress of technology and on a global stage, and entailing changes and novelties out of any social control. The other one is ideological, represented by the general belief that freedom of expression, together with the other principles of openness (freedom of the press, principle of publicity), are not only fundamental for democracy in general but the essence of *Swedish* democracy.

In this context, the issue of personal privacy and the risk of conflict with EU law are only scarcely mentioned by parliamentarians, even proclaimed as a danger to the functioning of freedom of expression in Sweden. Although the dormant tension between openness and privacy is not concretely manifested yet, the traces of a utopian mindset are already visible.

5.2 Second Proposal for Constitutional Amendment

5.2.1 Context: Amended Media Laws

In 2016, the committee appointed by the Government for a new revision of the two “media laws”¹⁴¹ shared the results of their investigation in a comprehensive report called “Amended media laws” (*Ändrade mediegrundlagar*). Given the changing European legal environment in the field of data protection through the adoption of the GDPR, which contains a fundamental ban on handling sensitive personal data through Article 9.1¹⁴², the report dedicates a chapter

¹⁴¹ The Fundamental Law on Freedom of Expression and the Freedom of the Press Act

¹⁴² “Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.” Source: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

to the balance between personal privacy and constitutional protection. Although the assessment establishes that the exemption of the “media laws” from the application of the GDPR will be maintained,¹⁴³ some concerns about personal privacy were expressed. More exactly, the possession of publication certificates by “various online services offered on commercial grounds and that involve the public being given access to information about private individuals from public documents and databases.”¹⁴⁴ These operations are viewed as problematic to personal privacy and the protection by the fundamental principles of freedom of expression and freedom of the press is not justified.¹⁴⁵ Due to the risk of privacy violation, the committee proposes an explicit exception (a ‘delegation provision’) that removes “search engines that provide sensitive personal data and information about violations of law, etc.”¹⁴⁶ from the scope of voluntary constitutional protection.

The proposal adopted by the government¹⁴⁷ is in line with the Committee’s reflection, proposing that it should be possible to ban search engines that contain sensitive personal data, such as violations of law.

5.2.2 Analysis: Traces of Ideology and Utopia through Ideographs

Motions

For this second proposal, only one motion (M3) was selected for analysis. The motion was forwarded by seven Members of the Riksdag and is in line with the issues raised by the official reports and by the government’s proposal: the voluntary constitutional protection through publication certificates opened the way for business practices that endanger people’s privacy and defy the EU’s rules on data protection. This realisation induces a reconsideration of openness and privacy in Sweden, identifiable in the content of the motion as well. A shadow of doubt starts to hover over the supremacy of openness: it is utopian thinking. The need to redefine the limit between what type of personal data can be made public and what type of personal data becomes potentially harmful for its subject once published is in sight. To observe these developments inside the text, I will look closely at ideographic elements

¹⁴³ See Swedish Government, “Ändrade mediegrundlagar,” 46.

¹⁴⁴ Ibid., 47.

¹⁴⁵ Ibid., 47.

¹⁴⁶ Ibid., 47.

¹⁴⁷ Regeringens proposition 2017/18:49, available at: https://www.riksdagen.se/sv/dokument-lagar/dokument/proposition/andrade-medigrundlagar_H50349/html

such as <principle of publicity>, <democracy>, <personal privacy>, <freedom of expression>, and <freedom of the press>, from a synchronic perspective.

The motion starts with a strong statement, similar to those used in M1 and M2, that takes the form of a general truth: “The principle of publicity is an inalienable part of our democracy.”¹⁴⁸ The author continues: “It guarantees the rule of law, fair administration and effective governance by enabling the public to scrutinise and thus control the public sector.”¹⁴⁹ <Principle of publicity>, representing one of the agents of ‘openness’, is described as an integral part of Swedish democracy. It contributes to the good and just functioning of a democratic society and provides the people with the capacity to hold their representatives and the public sector accountable. <Principle of publicity> becomes an indispensable part of <democracy> as, again, an expression of the “power to the people” highlighted by Rosengren (2019). The use of the possessive adjective “our” invests the <principle of publicity> with national character, something that belongs to a Swedish model of <democracy>.

Nevertheless, in the same paragraph, the author acknowledges the equally significant position that <personal privacy> occupies in a democratic society: “The protection of personal privacy is also an essential element of a democratic state governed by the rule of law and, like the principle of public access, enjoys constitutional protection.”¹⁵⁰ Thus, from the very beginning, the motion establishes both <principle of publicity> and <personal privacy> as constitutive of democracy. Compared to the material analysed in the previous chapter, where <personal privacy> was only a marginal risk on the side of enhanced freedom of expression online, the motion of 2016 displays them now as two equally important principles in democratic processes.

The second paragraph complements the first one by introducing the real source of tension: while both the principle of publicity and personal privacy are fundamental for democracy, they are based on opposing forces that enter into a clash: “Not rarely, however, these values come into conflict with each other, sometimes requiring difficult trade-offs between the protection of freedom of the press and freedom of expression and the personal privacy.”¹⁵¹ The idea that <freedom of the press> and <freedom of expression>, on one side, have to be

¹⁴⁸ Swedish Riksdag, “Integritet och offentlighet” (Privacy and publicity)

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

balanced with <personal privacy>, on the other side, becomes the central topic of the motion. When these rights are in conflict, the author explains, the prevalence of one will limit the force of the other: “A consolidation of personal privacy in the constitutionally protected area of freedom of the press and freedom of expression can in practice mean a weakening of freedom of the press and freedom of expression.”¹⁵² It is acknowledged that once <personal privacy> gains a more consolidated place in the area of <freedom of expression> and <freedom of the press>, it will have a shrinking effect on the two. However, surprisingly, this loss of intensity in the pre-eminence of openness due to greater focus on personal privacy is no longer exposed as a trade-off that must be avoided to protect the dominance of openness, but rather a reality which should be evaluated according to the idea that the values from both sides of the spectrum are important for democracy.

Further on, the motion presents the fast-developing digital world as a provider of new opportunities when it comes to expressing ideas and opinions and getting access to information. However, these innovations in the field of Internet and online communication are not flawless: “The use of information technology also leads to important questions and considerations about how personal data is processed and disseminated, as well as the risks of intrusion into personal privacy that may arise as a result.”¹⁵³ Information technology is no longer seen exclusively as an instrument for unlocking the unexploited capacities of freedom of expression, as it was regarded in 2001. The promising outcomes of free speech and a free flow of information through new channels on the Internet proved to have its shortcomings as well, that is, a negative impact on personal privacy. The association between <personal privacy> and ‘intrusion’, denotes the idea of an act of violence that the private life is suffering.

The motion touches upon the core issue caused by the lack of a more regulated online communication, that is, the publication on the Internet of highly sensitive data, available for everyone to consult: “However, the freedom of expression and the principle of public access to official records can hardly be said to protect the dissemination of data or information that constitute criminal offences or contain deeply sensitive data.”¹⁵⁴ What the authors articulate here is the gap that has opened between what <freedom of expression> and the <principle of

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

publicity> are and stand for and how they were distorted and misused by current services that have pushed the publication of highly sensitive data of individuals under the protective umbrella of absolute openness.

Taking into consideration the prioritisation of a larger scene for freedom of expression to perform, promoted in the discussions of 2001, the tendency in 2016 to divide the same scene between freedom of expression and personal privacy is a major shift, indicating a re-evaluation of the view of society on openness. The collision between the desire not only to maintain but to consolidate an existing order built on the socially internalised idea of a deeply rooted Swedish openness and the dismantling realisation that people's privacy is in danger is destabilising. This atmosphere of destabilisation, of deconstruction of a belief that is an integral part of the reality of a social group is a sign of utopian presence in the centre of ideological thinking that becomes now challenged.

The conflict between the 'real' aim of freedom of expression and of the principle of publicity and how they become 'misinterpreted' by certain actors is also a source of growing tension. The lack of consensus on what openness is and what it should serve leads to an atmosphere of mistrust and discontent among people. These are also driving forces of change, searching for alternatives to the existing reality.

The motion details the origin of the dispute, the main cause of the increasing dissolution of the existing order - the possession of publication certificates by search services processing a wide range of personal data such as home address, taxed income, property ownership and any criminal record: "When purely personal registers fall under the constitution and are thus not subject to personal data regulation, there is a great risk that individuals will suffer serious privacy violations."¹⁵⁵

It is important to notice that the transformation of the political and social attitude towards openness and privacy is activated by a concrete case, which, in line with Mannheims's conceptualisation of ideology and utopia and with Berger and Luckmann's view of institutionalisation, reflects a changing interest in society. Concretely, when individuals in a social group feel that their privacy and personal privacy are in peril due to the current interpretation of openness, their interests and needs, those elements that legitimise and

¹⁵⁵ Ibid.

integrate a certain order, are no longer fulfilled by the present state of things and aim for a reorganisation that they can entrust.

Debate

Proposal 2017/18:49 was debated and voted on by the Parliament. The analysis will focus on the intervention of four Members of the Parliament engaging in discussion as representatives of their respective parties. As for the first debate, during the analysis, they will not be referred to by their name, but as MP1, MP2, and MP3. For this part, we will be considered as ideographs <freedom of the press>, <freedom of expression>, <personal privacy>, <democracy>, <privacy>. Greater attention will be offered to other terms such as “change”, “protection”, “scrutinise”, “public”, and “offensive”.

MP1 introduces the debate by clearly highlighting its significance: these are the broadest revisions of the FLFE and of the FPA that have been made in decades. “There are therefore important decisions that the Chamber will soon have to make,”¹⁵⁶ affirms MP1. This rather grave tone that MP1 uses to highlight the significance of the undertaking is immediately tamed down by the reassurance that, despite the complexity of the matter discussed, the change is not fundamental, but “[r]ather, it is about changing in order to preserve.”¹⁵⁷ This reserved approach that MP1 chooses in order to describe the political situation confirms the sensitivity of the topic. The oxymoronic association between the verbs ‘change’ and ‘preserve’ describes with excellent accuracy the tension between ideology and utopia. According to MP1, the change, which refers to the proposal to ban search services that contain personal data on criminal offences that individuals are linked to, is aimed at preserving the fundamental principles of freedom of expression and freedom of the press in their authentic form consolidated through tradition. This rhetoric is rather ideological than utopian, as it inoculates the message that change is needed here in order to go back to the original state of things, which was only altered by misuse, not to fundamentally reform the institution of openness in Sweden.

Further on, MP1 appeals to history and social memory to emphasise the deeply grounded tradition of openness in Sweden: “As you know, Sweden had its first freedom of the press

¹⁵⁶ Swedish Riksdag, “Riksdagens protokoll 2017/18:122”

¹⁵⁷ Ibid.

regulation as early as 1766, and this year we celebrated the 250th anniversary of the world's first constitution to protect free speech. Sweden, therefore, has a strong and proud tradition when it comes to freedom of the press and freedom of expression, and it is important to protect and promote it.”¹⁵⁸ Similar to the first debate when history was invoked, this strategy conveys the idea that <freedom of the press> and <freedom of expression> are irreversibly part of the Swedish political and social identity and that there is an inherited responsibility to protect their very essence. Given this mission, MP1 clarifies that no decision will be taken to reshape the main pillars that sustain the two freedoms. The principles that the MP1 is referring to and that are enumerated are the freedom of establishment (*etableringsfriheten*), the principle of exclusivity (*exklusivitetsprincipen*), the ban on censorship and obstructive measures (*förbudet mot censur och hindrande åtgärder*), the single responsibility (*ensamansvaret*), the whistleblower protection (*meddelarskyddet*). “These are central building blocks of the legal system for freedom of the press and freedom of expression, and they are preserved,”¹⁵⁹ ensures MP1.

While the very core of the rights to freedom of the press and freedom of expression remains untouched, the changes proposed are punctual and aimed at preventing the violation of another democratic right - protection of personal data:

The most controversial issue, and one that has generated a lot of debate over the past year, is the proposal to make it possible to prohibit by law the publication on the web of personal data files containing certain particularly privacy-sensitive personal data if they are made available in a way that entails specific risks of intrusion into the privacy of individuals.¹⁶⁰

According to MP1, the proposal to prohibit the online publication of certain sets of ‘privacy-sensitive’ personal data is ‘controversial’. At the same time, the maintenance of such practice might “entail specific risks of intrusion into the privacy of individuals.”¹⁶¹ The use of the word ‘controversial’ implies a mixture of reactions at political and social levels, with arguments both in support of and against this prohibition. Controversy is another mark of internal processes of metamorphosis, the product of a collision between the will to preserve and a new disposition to look for alternatives.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

MP1 emphasises that amendments to constitutional provisions should be implemented with the condition of unanimous will emanating from the people: “There is great value in the fact that constitutional amendments are normally carried out with broad consensus in our country.”¹⁶² Nevertheless, MP1 mentions that consensus was not reached with regard to one acute issue, banning the publication of personal data concerning violations of the law

Fundamental laws, containing the principles and values of a state, are dynamic statutes, shaped and remodelled through ‘state will’ and ‘political unity’. ‘State will’ represents a collective will, bringing together and uniformising the individual will (see 4.2.1). With the lack of a homogenous wish for change, the amendment becomes illegitimate and unjust to go further with. Yet, disagreement at the social level does not mean the absence of utopian thinking. On the contrary, ideology and utopia, according to Ricoeur (1984), coexist and act upon each other. The existence of heated debate in society itself becomes proof of the alternation between the two. Despite the lack of support for this part of the proposal, MP1 clarifies:

This should not be misinterpreted as a disagreement about the value of privacy and the need to protect it. It is important to emphasise that search services providing personal data on criminal offences and similar circumstances constitute a serious interference with the privacy of individuals.¹⁶³

<Privacy> is here referred to as a value that needs to be protected and as a right that is in peril of violation due to too much exposure of personal data. Already a theme of the parliamentary discussions with the occasion of this proposal, both privacy and freedom of expression are equally recognised and praised. There is rising attention given to how this comprehensive interpretation of openness leads to “interference with the privacy of individuals.” Interestingly enough, the concern for privacy and protection of personal data did not occur separately from the commitment to openness, but it was produced by this very commitment. In other words, the relationship between ideological thinking and utopian thinking is one of dependence, with the utopian sparkle being ignited by ideology itself.

MP1 raises the issue of publication certificates. The way MP1 describes the nature of the services that the certificate facilitates reveals the reasons for discontent and concern for one’s privacy:

¹⁶² Ibid.

¹⁶³ Ibid.

At present, anyone can, with the support of a publication certificate and thus under constitutional protection, provide the public in practice with personal registers containing the names and addresses of people with a certain ethnic background, a certain sexual orientation, a certain religious conviction or a certain political opinion. It is not reasonable that this possibility exists. Under the current system, individuals risk suffering harm.¹⁶⁴

The information that these web services give access to under the protection of the FLFE is data concerning private aspects of an individual's life: ethnicity, sexual orientation, religious conviction or political opinion. These categories of data, when disclosed together with other types of data that make a data subject identifiable (i.e., name and address), are contributing to a high level of vulnerability and possible exposure to hate crimes, discrimination, and racism. “Under the current system, individuals risk suffering harm,”¹⁶⁵ MP1 concludes. The same openness that renders people power through debate, opinion formation, and scrutiny becomes a source of vulnerability.

The section moves forward to MP2 which discusses the topic having as a background the EU legislative landscape. MP2 sustains that the background to the legislative proposals adopted by the government and supported by a major part of the Riksdag is the EU General Data Protection Regulation that entered into force a couple of days before the debate and replaced the Personal Data Act (*personuppgiftslagen*). MP2 believes that there is a broad consensus over the fact that “access to and use of registers containing sensitive personal data, such as ethnic origin, health and political membership, should be strictly regulated.”¹⁶⁶ The desire for change is further enforced by an external force, which adds to the already existing discomfort in society - the new EU General Data Protection Regulation. “According to the GDPR,” continues MP2 “registers containing sensitive personal data are in principle prohibited. However, exceptions are proposed mainly for the right of public authorities and journalists to handle such data.”¹⁶⁷ The GDPR, representing the view of the EU on the protection of personal data and whose predecessor (i.e., the Directive 95/46/CE) was hardly recognised as applicable in any area where openness was manifested, becomes now, in the context of rising concerns on people’s privacy, a reality that starts to be integrated into the political rhetoric. This might represent a significant detail in the ideology-utopia duo and shed more light on the role that the EU legal framework for data protection plays in the amplification of utopian thinking in Sweden. The adoption of the perspective promoted in the GDPR becomes more

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

acute when there are already internal tensions on the topic. The EU law becomes another argument that strengthens the sentiment of dissatisfaction simmering within society.

Moreover, MP2 argues that the gaps in the implementation of the EU data protection rules when it comes to freedom of the press and freedom of expression in Sweden provoked the abuse of openness that affects Sweden now:

When Sweden introduced the old EU Data Protection Directive, it created a gap in the protection of privacy by stipulating that what was then the PUL [personuppgiftslagen] would not apply in the area of freedom of the press and freedom of expression. Thus, with the support of the FLFE, anyone could obtain a publication certificate for a website and create a loophole in the strict protection of personal data [...].¹⁶⁸

MP2 refers to the generous exemption that the old Personal Data Act in Sweden made in the area of freedom of expression and of the press, blocking the interference of data protection rules when the two openness-specific rights applied. <Privacy>, according to the description of MP2, was seen as a threat for <freedom of expression> and <freedom of the press>. The total separation of rights, which are not treated in their complementarity, but considered as being in enemy positions, and to which a predisposition for openness is added, downplayed the right to privacy and, according to MP2, facilitated the deviation in the case of publication certificates. However, MP2 sees in the GDPR an opportunity to revamp the rules on the protection of personal data and strive for a better balance between openness and privacy. This perspective of change coming on the EU highway contributes to the utopian mindset. It becomes a further argument that modifying the law is needed to ensure compliance with the EU law and an assurance that privacy can be better protected through the GDPR.

The intervention of MP3 grasps the complexity of the matter and the challenge to accommodate two opposing forces that animate the society: preservation of the social order, on one side, and re-evaluation and remodelling, on the other side. According to MP3, change in the world is inevitable and, lately, so rapid that becomes difficult to follow and integrate, which is particularly evident in the media sector:

The world is changing all the time, [...] and often rapidly and disruptively. This is perhaps particularly true in the media sector, and I am talking about both production and distribution and consumer behaviour. Moreover, these changes often take place in an intricate sequence where it is difficult to determine who is driving what.

¹⁶⁸ Ibid.

It was therefore not a bad idea for the government to review the media regulations and present a bill containing proposals on how we can guarantee both openness and integrity in a changing society.¹⁶⁹

Fifteen years earlier, the outlook on the fast-paced progress in the IT and Internet area was extremely positive and focused on the endless opportunities that this new realm could have opened for freedom of expression and opinion formation. The current approach, however, portrays these advancements as disruptive and intricate. Given this complexity, the review of the media regulations becomes a welcomed and needed action for ensuring both “openness and integrity in a changing society”. <Openness> and <integrity> are framed as values that must be equally guaranteed and whose stability and continuity must be maintained despite the transformations taking place around them.

The opposing interests, the complex nature of constitutional revisions and incremental apprehension about personal privacy contribute to a state of incertitude and contention that precedes important decisions and that accompanies significant shifts in the social reality. MP3 translates this amalgam into one question that goes to the very core of the whole political and social puzzle: “This is where we run into a familiar dilemma: Where is the intersection between societal openness and individual privacy?”¹⁷⁰ The harmonious and balanced coexistence between <openness>, presented as a social principle, and <privacy>, belonging to the individual rights sphere, was not reached yet. However, the existence of a ‘dilemma’ is already, in the sociocultural imaginary, a rolling mechanism of ideology and utopia.

5.2.3 Conclusions

In this chapter, several ideographs have been put under the magnifying glass: <freedom of the press>, <freedom of expression>, <personal privacy>, <democracy>, <privacy>. Their interaction in the text showed that openness became counterbalanced by greater attention given to the aspects of personal privacy and private life. Ideographs belonging to both spheres were integrated into the rhetoric that built democracy as equally conditioned by principles of openness and privacy.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

The discussions were fuelled by a controversy that has engaged Swedish society in the last years: the multiplication of search services that possess publication certificates and make available for the large public a range of sensitive personal data belonging to individuals residing in Sweden. In this context, the importance of the protection of personal data becomes more acknowledged and acute and freedom of expression, although still recognised as fundamental, needs to make space for new concerns. Utopian thinking is now more present, challenging the existing order.

On top of that, during the debate, the entry into force of the General Data Protection Regulation with stricter rules for the processing of sensitive data is also stressed, encouraging the voices that militate for enhanced security of personal privacy. The utopian sentiment becomes thus amplified by both external and internal factors.

5.4 Third Proposal for Constitutional Amendment

5.3.1 Context: An Effective Protection for Freedom of the Press and Freedom of Expression

In 2018, a new committee was appointed by the Swedish Government to re-investigate certain issues in the legal area of freedom of expression and freedom of the press. Two years later, the committee submits the report “An Effective Protection of Freedom of the Press and Freedom of Expression.”¹⁷¹ Among others, the committee investigated the matter of constitutional protection for certain search services. The report brings to the attention of the government that there is very limited scope to safeguard personal privacy in the areas covered by the FPA and the FLFE, in the area in which data protection provisions, for example, are not applied.¹⁷² This legal looseness allowed certain search services enjoying voluntary constitutional protection to freely publish personal data relating to criminal offences, although this category of data receives special protection under the GDPR.¹⁷³

Given the risks of privacy violation, the committee proposes that the existing delegation concerning sensitive personal data¹⁷⁴ should be amended by “adding personal data relating to

¹⁷¹ “Ett ändamålsenligt skydd för tryck- och yttrandefriheten” (SOU 2020:45)

¹⁷² Swedish Government, “Ett ändamålsenligt skydd för tryck- och yttrandefriheten,” 37.

¹⁷³ Ibid., 37.

¹⁷⁴ The delegation was introduced during the constitutional amendment of 2016.

criminal offences to the list of categories of personal data that can be regulated by ordinary law.”¹⁷⁵ As such, the search engines that comprise a collection of data related to criminal offences committed by individuals would no longer be covered by voluntary constitutional protection. The report recommends, however, that in borderline cases “the interest in freedom of expression should carry the most weight.”¹⁷⁶

The government’s proposal¹⁷⁷ reflects the committee’s positioning on the issue and provides for a limitation of the constitutional protection for search services collecting and making available individuals’ data on criminal offences.

5.3.2 Analysis: Traces of Ideology and Utopia through Ideographs

Motions

In connection to Proposal 2021/22:59, one motion was selected for analysis. The motion will be further referred to as M4. It was forwarded by three Members of the Riksdag and stressed the carefulness with which freedom of expression and personal privacy needs to be weighed and balanced in society, considering Sweden’s long tradition of openness. The analysis will develop on this topic by paying attention to the ideographs <freedom of expression>, <freedom of the press>, <opinion formation>, and <personal privacy>.

The first reference that M4 makes is to one of the fundamental laws of Sweden, the Instrument of Government (*Regeringsformen*), which, together with the FLFE, the FPA and the Act of Succession, constitute the legal pillars that establish the fundamental principles by which Sweden are governed. The authors of M4 evoke the first Article in the Instrument of Government: “Chapter 1, section 1 of the Instrument of Government states that the Swedish national government is based on the free formation of opinion. The Constitution’s catalogue of rights also emphasises the crucial importance of freedom of the press and freedom of expression in our democratic system [...]”.¹⁷⁸

¹⁷⁵ Swedish Government, “Ett ändamålsenligt skydd för tryck- och yttrandefriheten,” 38

¹⁷⁶ Ibid., 38.

¹⁷⁷ Proposition 2021/22:59 “Ett ändamålsenligt skydd för tryck- och yttrandefriheten”

¹⁷⁸ Swedish Riksdag, “Minska rånrisk genom uppgifter på söksajter” (Reduce the risk of robbery through information on search websites)

The choice in introducing the motion is a clear hint of ideological positioning on the matter. <Opinion formation> is emphasised as a crucial, *sine-qua-non* principle for Swedish society to function properly. Also, highlighting <opinion formation> as pre-eminent through its privileged place in the Instrument of Government denotes that this principle, unlike others, is non-negotiable or hardly negotiable. Shortly after, the authors specify that even <freedom of the press> and <freedom of expression> are also enshrined in the Instrument as constitutive of a democratic system. Thus, the rights belonging to the sphere of openness appear well-grounded in the Swedish model of governance. On this background, any attempt to reorganise the setting in which these three elements act needs to happen with great consideration:

In other words, it is difficult to overestimate the fundamental importance of these rights and freedoms in our system of government and our legal system. In light of this, it is clear that restrictions on freedom of the press and freedom of expression (including freedom of information) must be handled with great care.¹⁷⁹

The motion makes a powerful and almost hyperbolic affirmation that the rights and freedoms flowing from the principle of openness are difficult to overestimate. In other words, it is unlikely that norms as pivotal as freedom of the press, freedom of expression, and, as mentioned in the quote above, freedom of information could ever be depreciated when in conflict with other norms. <Freedom of the press> and <freedom of expression> gain, by being embedded in the fundamental law of Sweden, an aura of transcendence of time, space, and contexts. As such, any minor restriction to their full manifestation has to happen extremely carefully.

M4 frankly describes the actual relationship between openness and personal privacy in Sweden, also compared to European law:

Freedom of opinion, and in particular freedom of the press and freedom of expression, is often in conflict with the right to privacy. It is also clear that the freedoms of the press and expression are particularly highly valued compared to personal privacy and the right to privacy in the Swedish system compared to the vast majority of liberal democracies, but this is particularly evident in relation to European law.¹⁸⁰

According to MP4, situations when freedom of opinion in its different forms overlaps with the right to privacy are frequent. At the same time, the authors openly acknowledge that in Sweden freedom of the press and freedom of expression prevail when balanced with personal privacy and the right to privacy. This predisposition towards openness and freedom of

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

opinion in Sweden stands out in the group of liberal democracies and, very importantly, becomes even more obvious when sat next to European law.¹⁸¹ This remark is significant as it openly confirms the special case of Sweden with regard to openness. The authors describe as “clear” the dominance of <freedom of the press> and <freedom of expression> in Sweden, a statement that denotes not only that this particularity is easily noticeable, but also well-established and accepted as an ordinary fact. Going back to Berger and Luckmans’s social theory of knowledge, we can identify how the tradition of openness entered the social stock of knowledge, with the help of which individuals in Swedish society construct their everyday reality. The prevalence of freedom of expression and freedom of the press over privacy and data protection becomes ordinary. The norm is no longer perceived as strange or surprising, even when it comes in contrast with different ‘realities’ (of other liberal democracies). Moreover, emphasising the difference between the Swedish and the European approach implies that the import and integration of norms that take their cue from the European perspective on privacy and openness would entail a great change in the domestic order.

However, the existence of a recognised social institution of openness in Sweden does not exclude that change and review are possible and even desirable:

It is also clear that the Swedish system's strong protection of freedom of the press and freedom of expression, at the expense of privacy, is increasingly in need of review and balancing. The digital evolution of the last decade has created new conflicts between these key rights and freedoms, which need to be resolved in a sustainable and balanced way.¹⁸²

The authors admit that the protectionism towards freedom of the press and freedom of expression in Sweden, although entrenched in the social order, becomes a source of friction that needs to be addressed. <Privacy> is recognised as being in a position of inferiority, while <freedom of the press> and <freedom of expression> occupy a privileged spot. This disproportion of power became, however, troublesome once the digital revolution took the lead. Now, the authors of M4 express the need for a ‘sustainable’ and ‘balanced’ solution to fill this gap. Although the motion places <freedom of expression> and <freedom of the press> among the values that shape Sweden as a state and that could hardly be overestimated, change becomes unavoidable: “It will not be possible to counteract all invasions of privacy, but some additional restrictions on freedom of the press and expression will be inevitable.” The authors argue that restrictions on <freedom of the press> and <freedom of expression>

¹⁸¹ The motion did not refer here to the GDPR, but to the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights.

¹⁸² Ibid.

become a necessary concession in today's landscape, a concession that should be made with carefulness. Still, the compromise is not absolute and the roles will not be reversed, with personal privacy being prioritised. The statute of <privacy> will be ameliorated, but not optimised.

The motion depicts the state of play of openness and privacy in Sweden, openly acknowledging the institutionalised disbalance between the two. The ideological mindset represented by several references to a social order built on openness and opinion formation is present and firm. However, what stands out in M4 is that the utopian mentality, although not overthrowing ideology, is categorical and the need for review and minor adjustments in the favour of personal privacy becomes an accepted alternative.

Debate

The parliamentary debate that followed the adoption of Proposal 2021/22:59 took place in May 2022. Concerns that the formulation of the proposal will open the way for unpredictable and broad restrictions of freedom of expression are put on the table and discussed. The analysis will focus, however, on the overall attitude towards freedom of expression and protection of personal data and privacy, as it results from the rhetoric of the Members of the Riksdag. The input from five parliamentarians will be examined and, similarly to the two first debates, the name of the participants will be replaced with MP1, MP2, MP3, MP4, and MP5. To better follow the changes in the social imaginary from one proposal to another, the same terms will serve as ideographs: <freedom of expression>, <freedom of the press>, <personal privacy> (or, simply, <privacy>).

One recurrent element for all three debates selected is the historical reference, by excellence an ideological tool. The use of history has a legitimating function that justifies, by looking back to inaugural events and milestones in the evolution of openness in Sweden, the propensity that the Swedish society developed for the protection and promotion of values such as freedom of expression and press:

It was already in the 18th century when Sweden and Finland were one kingdom, that the Parliament adopted our first FPA. Since then, freedom of the press and freedom of expression has certainly taken different forms through the development of technology, such as printing, broadcast media, television and digital media. Although it is obvious to us in Sweden that every person should be able to express opinions and think freely and openly, this constitution

needs to be constantly safeguarded and, based on the challenges arising from technological development, updated and kept current.¹⁸³

MP1 resorts to the activation of social memory by evoking the symbolic 18th century, when the first FPA was adopted. Furthermore, MP1 specifies that back in that time, “Sweden and Finland were one kingdom,” implying that the institution of openness started being built in a very distant time when even the geo-political context was completely different. In other words, the reality that back then fostered the establishment of freedom of expression and press as rights ensured by law no longer exists. However, they did not disappear with the disintegration of that reality but were transmitted to the coming generations, adapting to dissolutions and reconstructions of political and social orders. The technological developments and the birth of new and innovative media channels have attested to the adjustability of freedom of expression and freedom of the press to emerging methods of communication. Besides, MP1 speaks on behalf of the whole Swedish society when they admit that “it is obvious to us in Sweden that every person should be able to express opinions and think freely and openly.” The freedom of opinion formation and expression is an integral part of the everyday life of individuals in Sweden. Nevertheless, measures need to be taken to address challenges, to adapt to new conditions and to ensure continuity and security for these fundamental rights. <Freedom of the press> and <freedom of expression> gain once again a privileged position, one that is built up through a long history of resilience, and everyday practice.

However, the possible challenges that could curtail the agency of freedom of the press and freedom of expression and, at the same time, endanger one’s privacy, have now been concretised:

Already when the possibility of voluntary constitutional protection through publication certificates was introduced almost two decades ago, in 2003, the Committee on the Constitution warned that it could be utilised in a way that gives rise to conflicts with the provisions that exist to protect personal privacy.

Developments have shown that, in our view, the Committee's fears have been realised.¹⁸⁴

The discussions around the first constitutional amendment, when the risk of violation of the rules on personal data protection was scarcely and reluctantly pointed out, become premonitory in light of the current heated dispute on websites publishing sensitive data. The

¹⁸³ Swedish Riksdag, “Riksdagens protokoll 2021/22:111”

¹⁸⁴ Ibid.

danger of harmful bi-products of an insufficiently regulated extension of constitutional protection is now a reality and has to be treated as such, not through prevention, but through drastic decisions. However, the issue is not easy to solve as the arguments for enhanced protection of privacy and personal data are counterbalanced by arguments flagging the Swedish institution of openness and the negative effects of restriction of freedom of expression and information.

MP1 is nonetheless voicing their worries related to the maintenance of the “Swedish model of openness,” considering growing constraints imposed by the EU:

In April 2019, the government received a so-called political letter from the Commission. This is a first step towards what is characterised as an infringement case. In the letter, the Commission emphasised that it is doubtful whether the Swedish constitutional exemption in the Data Protection Act is compatible with Union law, in particular with the GDPR.¹⁸⁵

The need for change is again amplified by the liability of Sweden towards the EU. The utopian mechanisms are fuelled by the obligation of implementing the Union law, which until now has been interpreted in favour of the openness-prone Swedish legislation. However, the perspective brought by the entrance into force of the GDPR is stricter. The rather broad and permissive space of adaptation of the old directive to the existing national legislation is replaced by a regulation entailing direct implementation in the Member States. The Commission’s lenient attitude has also changed with the enlivenment of the GDPR, expressing their disagreement over the exemption that Swedish made from data protection rules in favour of the liberty of freedom of expression and freedom of the press. With the growing risk of becoming subject to an infringement procedure for lack of compliance with the GDPR, the EU becomes a menacing instance that inflicts change. This idea is further enforced by MP1: “The moment a complaint is submitted to the European Court of Justice, Sweden effectively loses the possibility of political influence.”¹⁸⁶ The rhetoric of MP1 conveys the idea of a latent peril, which will irreversibly confiscate the power of self-regulation, inducing the Riksdag to urgently decide on the matter.

MP4 intervention is characterised by the same warning tone, alerting the audience on the coercive measures that the Commission will take against Sweden: “All of us in this room are fully aware that the Commission will not sit back and watch if Sweden does not continue to

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

work to resolve this situation, where personal privacy must be protected.”¹⁸⁷ The EU becomes a driving force of change, an element that, paradoxically, strengthens utopia not necessarily through a shift in the core beliefs and values of a society, but through fear of sanctions. MP2 is also mentioning a relevant detail that directly suggests that individuals themselves seek redress from the Commission:

The question of what personal data is stored in search services is of concern to many citizens. [...] I have asked how many complaints the Commission has received and can confirm that there are several: 14 in 2020 and 19 in 2021, which is considered to be many in one area. The evolution of databases has been highlighted many times over the years and the need for protection of personal privacy is a constant concern.¹⁸⁸

The focus shifts from political concerns related to EU sanctions to citizens’ growing interest in justice and support from the Commission. The discontent over the constitutionally protected disclosure of sensitive personal data pushes Swedish citizens to look for solutions at the supranational level. Clinging to the rules of the GDPR, they make use of existing channels of communication with the executive body of the EU and forward formal complaints related to voluntary constitutional protection for search services. This perspective adds a new dimension to the rhetoric of MP3 that conveys the idea that the EU norms have exceeded the political arena and spread throughout society, consolidating the utopian mindset through a bottom-up approach. <Personal privacy> has gradually become a quotidian topic, associated with a feeling of worry over one’s privacy. In this context, a wave of Europeanisation entered society, building on the insecure internal situation over the protection of personal data.

The syntax can also provide hints of interpretation. MP2 begins his discourse as follows: “Storing information is important in an information society. The stored information is needed in several areas. But some rules limit the right to store, save and reuse. The General Data Protection Regulation (GDPR) deals with personal privacy on the Internet.”¹⁸⁹ What can be noticed in the quote above is the separation of an ideologically featured statement from a utopian one using the adversative conjunction ‘but’. On one side, there is the acknowledgement that access to information is a condition for the good functioning of a society where information becomes a collective immaterial good. On the other side, there are limits in the processing of that information, limits that are decided and imposed through EU

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

law and that secure <personal privacy>. Syntax becomes an indicator of contrast between two statements and another level of analysis that can reveal opposition between two faces of reality, one that leans towards preserving norms and one that aims at integrating new ones.

Moving forward, MP3 presents another face of the problem, arguing that the publication of personal data related to criminal history becomes a threat to social inclusion and reintegration. MP3 begins by acknowledging, on the same model of many other MPs, that “Sweden has a good and long tradition of protecting freedom of the press and freedom of expression, a central part of a strong and well-developed democracy.”¹⁹⁰ They continue: “Free speech may only be restricted if there are very good reasons for doing so.”¹⁹¹ <Freedom of the press> and <freedom of expression> appear in the same ideological setting, where their protection is customary and seen as a sign of a mature and solid democratic society. Exceptions from this social establishment may occur only if “good reasons” are invoked. MP3 argues that the risk of segregation and discrimination of people due to criminal antecedents published by search services represents one of these legitimate reasons:

Data on a committed crime is particularly sensitive as it can be stigmatising and make it difficult for a person to adapt to society after serving a sentence. [...] It is important to note that, for example, a conviction also contains information about victims of crimes, which means that their integrity can also be affected. Being subjected to a crime can be very stressful and create suffering for a long time.¹⁹²

The utopian thinking becomes ‘enriched’ by a new perspective, that of social exclusion due to unlimited transparency and access to information. Old committed crimes can hinder individuals from being reintegrated into society, leading thus to seclusion. Moreover, the victims of crimes can also feel vulnerable and uneasy through the disclosure of highly sensitive and unpleasant details of one’s life. <Integrity> is here used to describe the victim’s self-image and social image that can be affected by too much transparency into the private life. The risk of stigmatising or making public one’s vulnerability has thus a discrediting effect on the Swedish institution of openness.

Finally, the intervention of MP5 summarises the dilemma that preoccupies the political class and stirs controversy in society:

It is not an easy issue we have to deal with, Madam President. On the one hand, we have the protection of our constitution. [...] We are bound to protect it. On the other hand, the

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

Committee on the Constitution is also tasked with safeguarding the individual's protection against violations of integrity.¹⁹³

The struggle of reconciling a tradition that becomes characteristic of a whole society and is enshrined in the fundamental laws of Sweden with the imperative of protection of privacy and personal data originating from both the EU law and from a growing discontent in society is evident. Two opposing forces confront each other and intensify the tension within the imaginary. Ideology pulls backwards, while utopia pushes forward. The conflict becomes more and more fierce and a conciliatory solution is hard to find. “Det är problematiskt”¹⁹⁴, concludes MP5.

5.3.3 Conclusions

In 2022, the imminence of change is almost indisputable. Although the place of openness in society is further conceived as central and essential, showing that ideological thinking will persist and last, the issues of privacy and protection of personal data can no longer be ignored. The voice of the people worried about their privacy becomes louder and the constraints approaching in the shape of GDPR provisions, warnings from the Commission, and possible EU sanctions become pressing. The presence of the authority of the EU as a promoter and enforcer of the protection of personal data in Sweden is particularly prominent in this last debate. The EU alternative is highly constitutive of utopian thinking in 2022. Despite all that, a common denominator is hard to reach and the matter remains problematic.

6 Discussion

This section attempts to provide an overview of the results of the analysis by summarising them around the two research questions of the paper.

¹⁹³ Ibid.

¹⁹⁴ Translation: “It is problematic.”

1. How does voluntary constitutional protection change the dynamic between the ideology of openness and the utopia of personal privacy in the Swedish imaginary from 2001 to 2022?

The voluntary constitutional protection through publication certificates has made the subject of three major proposals for amendments in the FLFE, which have been addressed in the Parliament through motions and debates. By looking through both a synchronic and a diachronic perspective at ideographs belonging to either the semantic spectrum of openness or privacy, the analysis sought traces of ideological and utopian thinking. The results indicate that the attitude towards openness and privacy changes over time, especially once controversial search services start to appear and publish sensitive personal data of individuals residing in Sweden. The desire to preserve (and even to enhance) the Swedish tradition of openness, which dominated the discussions of 2001, becomes gradually counterbalanced by an intensified need for change in the direction of strengthened personal privacy.

Around the turn of the century, the fast-paced IT developments, paving the way to innovative means of communication, awakened enthusiasm in Swedish society that imagined new opportunities for freedom of expression and opinion formation. This enthusiasm is reflected in the rhetoric of parliamentarians about the extension of constitutional protection to non-traditional media. The high frequency of ideographs such as <freedom of expression> and <opinion formation> is associated with the Swedish model of democracy, the dominance of openness and the potential that the new technologies could have on further consolidating it. It was matter-of-course that the extension of the constitutional protection was beneficial and that freedom of expression, a social institution deeply embedded in the reality of Swedish society, should be further strengthened. The influence of ideology is evident, while utopia shows itself shily, through brief remarks on possible pitfalls for privacy and through the request for a new report on the implications that voluntary constitutional protection could have on personal privacy. The utopia was slowly starting to build through a slight feeling of incertitude and unpredictability for the future of personal privacy.

The emergence of websites that publish sensitive categories of personal data under the protection of publication certificates that provide an exemption from data protection rules produces a major shift in the perspective on openness and privacy in Sweden. The rhetoric of 2016 and 2022 is no longer characterised by optimism or by absolute and undivided praise of

openness. The conflict between ideology and utopia grows and is translated through the persisting belief in the importance of great openness challenged by the need to have better protection of one's private life and data. This is also noticeable through the more prominent opposition between <freedom of expression> and <freedom of the press>, on one side, and <privacy> and <personal privacy>, on the other side.

The ideological representation of values reflects both Berger and Luckmann's idea of social institutions and Mannheim's and Ricoeur's conceptualisation of ideology as a constituent of any social imaginary. The social order as defined by Berger and Luckmann is "an ongoing human production."¹⁹⁵ Institutionalisation is one of the processes that, through a collective typification of patterns of action within a social group, build certain bits in the imaginary. The institution, understood as an established practice in society, is not unwavering on its own, but needs (ongoing) consolidation through legitimation and a justifying discourse. We could see throughout the whole analysis how openness is portrayed as an institution in Sweden and shielded as such. Impactful statements such as "Information exchange and dialogue are the lifeblood of democracy,"¹⁹⁶ or "Chapter 1, section 1 of the Instrument of Government (RF) states that the Swedish national government is based on the free formation of opinion"¹⁹⁷ reveal the privileged place that the values of openness have in Sweden, stipulated in the constitution of the state itself. Moreover, admitting that "the freedoms of press and expression are particularly highly valued in relation to the right to privacy in the Swedish system"¹⁹⁸ shows the presence of a specific Swedish representation of openness, showcased as rather singular among liberal democracies and that should be kept intact as much as possible. Historicism, mentioned by Berger and Luckmann as a justifying strategy, is used in all three moments analysed to reiterate exactly the idea that the institution openness in Sweden is the product of a long and strenuous process spread throughout centuries and its current meaning originated in the past and has a solid base consolidated in time. As such, openness becomes a social 'object' that transcends time and that gains legitimation outside of the individual existence of people. Openness becomes a given, a piece of sociocultural heritage that people receive and need to take care of transmitting further. This process of continuous validation and consolidation present in the rhetoric of MPs from the early 2000s

¹⁹⁵ Berger and Luckmann, "The Social Construction of Reality: A Treatise in the Sociology of Knowledge," 69.

¹⁹⁶ See Swedish Riksdag, "Yttrandefriheten i Sverige" (Freedom of Expression in Sweden)

¹⁹⁷ See Swedish Riksdag, "Minska rånrisk genom uppgifter på söksajter" (Reduce the risk of robbery through information on search websites)

¹⁹⁸ Ibid.

until 2022 is also directly connected with ideological thinking. For instance, Berger and Luckmann's idea of historicism as a method of justification corresponds to one of the functions of ideology formulated by Ricoeur (1984): integration in the social memory. Ideology refers, in order to secure the solidity of the values that it stands for, to inaugural events in the remote past. Thus, the evocation of the monumental year 1766 in all debates becomes a way of bridging an unlived history to the self-image of today's community.

Ricoeur (1984) sees the social imaginary as the converging point between "our expectations related to the future, our inherited traditions and our initiatives in the present."¹⁹⁹ While inherited traditions represent the base of ideology, the expectations related to the future constitute utopia. Mannheim defines as utopian "all situationally transcendent ideas (not only wish-projections) which in any way have a transforming effect upon the existing historical-social order."²⁰⁰ Utopia proposes alternatives to society, producing a "destructive" tension. In the current case, utopia is fed by a growing desire for privacy and concern for personal data. These values are turned towards individuality, enclosure, and opacity, coming in conflict with the social values of openness and transparency. This existential binomial corresponds to Ricoeur's clash between ideology and utopia: "With this double imaginary we touch upon an essentially conflictual structure."²⁰¹ Nevertheless, the utopian manifestation is not that intense from the very first debate, when the risks did not concretise yet and the effects on personal privacy were still "unpredictable." The appearance of the disputed search services that trigger people's fear of too much exposure causes a dislocation that intensifies utopian thinking by new directions for the future. In this new frame of thought, the right to privacy is upgraded to a superior level by M3: "The protection of personal privacy is also an essential element of a democratic state governed by the rule of law and, like the principle of public access, enjoys constitutional protection."²⁰² The tension between ideology and utopia is at its peak during the third debate. The political class is in limbo and tries to create a balanced arrangement between the right to freedom of expression, and the right to privacy and data protection, in a period where the EU authority threatens with the opening of an infringement procedure. Simultaneously, the people show discontent and appeal to the Commission for a just assessment of the situation.

¹⁹⁹ Ricoeur, "L'idéologie et l'utopie : Deux Expressions de l'imaginaire Social.", 53.

²⁰⁰ Mannheim, "Ideology and Utopia", 183.

²⁰¹ Ricoeur, "L'idéologie et l'utopie : Deux Expressions de l'imaginaire Social.", 53.

²⁰² Swedish Riksdag, "Integritet och offentlighet" (Privacy and publicity)

The ideological thinking is by no means suppressed by utopia but rather downplayed through changing interests. Although the ideological mindset is maintained throughout the years, society can no longer fully endorse openness when, in the name of the same openness, a great amount of their data is made available to the large public. Utopian thinking leans towards finding alternatives to the current order that no longer fulfils individuals' interests and values. Right now, the growing concerns over privacy and data protection are reshaping the social order and striving for a new setting that will be able to integrate new needs. Change is, however, by no means smooth or linear, but conflictual and intricate.

2. How does the perspective on EU law displayed in the discussion of 2001 differ from the perspective of 2016 and 2022, respectively?

As the development of search services is more and more considered a violation of privacy and the utopian mindset spreads throughout society, the role of the EU law (i.e., the GDPR) and the reality that Sweden is also bound to respect it become more acknowledged and promoted. Based on the results of the analysis, the references to the EU become more numerous from one year to another and the influence of the Commission and the EU legislation is increasingly fuelling the utopian thinking that seeks more protection of personal data and privacy.

In 2001, when the introduction of voluntary constitutional protection through publication certificates was debated, possible issues caused by the lack of compliance with the then Directive 95/46/CE were viewed as a remote and non-investigated risk. There were even voices affirming that the EU rules on the protection of personal data were shrinking the full manifestation of freedom of expression in Sweden. The Directive was not applicable in areas where openness was concerned, proving again that openness weighed more when compared to the right to protection of personal data. Fifteen years later, the context changed. Not only did the controversy provoked by the usage of publication certificates activate peoples' concern over the disclosure of their data, but the GDPR, implying more detailed and stricter rules and direct implementation in the Member States, was in sight. The GDPR becomes an opportunity to fill the gaps left by largely permissive legislation for freedom of expression. The pressure coming from the European Union feels the most prominent during the parliamentary debate of 2022. The GDPR entered into force and the Commission issued a political letter expressing its doubts over the compliance of the Swedish constitutional

exemption in the Data Protection Act with the existing EU legislation. The fear of having to face the coercion of an infringement procedure is shared by the Swedish Parliament. Moreover, the people themselves start turning to the Commission to complain about the lack of protection of their data. The EU becomes both a source of concern and a potential solution.

The evolving outlook on the EU and the Union law, seen through the lenses of ideology and utopia, becomes particularly interesting for the question of Europeanisation. EU norms for data protection, which were initially considered as being unwanted limitations to the privileged institution of openness in Sweden, are slowly accepted, even desired by the people. The process of Europeanisation in the field of privacy and data protection is accelerated once discontent grows within society, and the social order, which was deeply rooted in national tradition and beliefs, no longer fully serves the interests of people. At the same time, the fear of EU sanctions, which is extremely lively during the last debate, entails also a rather ‘forced’ Europeanisation. More exactly, the integration of the stricter EU view on the protection of personal data in the Swedish legislation becomes a solution for avoiding conflict with the EU’s executive body, not the result of a real assimilation of the perspective promoted by the GDPR.

This ambivalent attitude towards the role of the Union is raising the question of future scenarios. The idea that the faith of publication certificates is in the hands of the EU becomes highly probable and the urgency-filled statement of one of the MPs reinforces this great likelihood: “The moment a complaint is submitted to the European Court of Justice, Sweden effectively loses the possibility of political influence.” A formal infringement procedure would impose the implementation of the breached provisions of the GDPR, as interpreted by the Court of Justice of the EU and might also lead to financial penalties, a perspective that not only threatens the internal political and social balance but also the international image that Sweden has showcased around the pillar of openness. How Sweden would manage such a situation is difficult to foresee, although Österdahl (2016) predicts resistance to change: “It is difficult to imagine that Sweden would accept the superiority of the adopted Regulation to its constitutional laws, should a direct conflict arise between the Swedish law on access to documents and the Regulation.”²⁰³ Another unexplored alternative is the gradual

²⁰³ Österdahl, “Between 250 years of free information and 20 years of EU and Internet,” 39.

implementation of the GDPR provisions through the investigations and the sanctions of the Swedish Authority for Privacy Protection, whose role is to uphold the protection of personal data at the national level.²⁰⁴ Lately, cases such as Verifiera AB, which was judged as non-compliant with the exemption of the GDPR for journalistic and artistic purposes, sets a precedent that might be followed for future similar cases. Europeanisation would be induced internally, which might increase its legitimacy and avoid external reproof.

The question of where the process of Europeanisation in the field of privacy is heading in Sweden is merely a legal one but above all a sociocultural one. The integration of EU norms in a field presented as Sweden's "cultural heritage" will surely further modify the imaginary and the relationship between ideology and utopia.

7 Conclusions

This study arrives at its end with the hope that, if the foreign student that told their story in the very beginning managed to go through the present paper, they would conclude that the reply of the Swedish friend ("It is like that in Sweden. We are very open here.") is only a partial truth, a stereotype. Hopefully, they will understand that the social reality and the social knowledge that legitimise the institution of openness in Sweden are in constant transformation and that the imaginary within which this openness performs is ever-changing. Perhaps they would realise that the instant feeling of discomfort that they experienced when discovering the existence of these disputed websites is shared by many other people in Sweden, both among the electorate and the elected, and that this collective discomfort is challenging the existing order by a reaffirmed need for privacy. If the student posed themselves the questions of compliance of these practices with the GDPR, they would not receive a clear answer. Unless the Court of Justice of the European Union will eventually give a verdict, this matter is unresolved. However, the student will for sure see that the influence of the EU is growing both among the state authorities and among people, who find the EU rules on data protection a solution to an openness that unpleasantly steps into their private life.

²⁰⁴ Swedish Authority for Privacy Protection, "Welcome to IMY!"

Or, on the contrary, the student could say that none of these ideas can be argued based solely on the analysis of some parliamentary motions and debates. This opinion could not be disregarded. Nevertheless, what stands at the end of this paper is the complexity of social imaginaries that are constantly reconstructed and rebalanced by either the desire to preserve what is known and established as the norm or to disrupt this setting through what is envisaged for the future.

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