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## Article

# First In, First Out: Promises and Problems of Free Expression in Revolutionary and Post-Revolutionary Governments

BENJAMIN POMERANCE<sup>†</sup>

*“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”*

John Milton, *Areopagitica* (1644)<sup>1</sup>

*“All that makes existence valuable to any one, depends on the enforcement of restraints upon the actions of other people.”*

John Stuart Mill, *On Liberty* (1859)<sup>2</sup>

For centuries, advocates for societal change have sought greater legal protections for freedom of expression. Some of the most influential revolutions from the past three hundred years arose in significant measure from citizens demanding such safeguards, risking their lives to attack existing regimes, and demanding that their

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1. *Areopagitica: A Speech of Mr. John Milton, reprinted in JOHN MILTON PROSE: MAJOR WRITINGS ON LIBERTY, POLITICS, RELIGION, AND EDUCATION* 209 (David Loewenstein, ed., 2013) (1644).

2. JOHN STUART MILL, *ON LIBERTY* 5 (H.O. Houghton, 2d ed. 1863) (1859).

government grant the people this liberty. Promises of enhanced freedom of expression were, for instance, at the forefront of messages that galvanized revolutionary efforts in eighteenth-century North America and France, twentieth-century Russia and Cuba, and twenty-first century Egypt and Tunisia.<sup>3</sup> In each of these successful uprisings, rebels ardently supported new leaders who repeatedly vowed to expand the legal latitude for people to express themselves without fear of government-imposed sanctions.<sup>4</sup>

After the revolution, however, all of these governments quickly changed course.<sup>5</sup> Before long, the new leaders who rose to the top through the backing of a citizenry that devoured their promises—including their paeans to free speech and expression—vigorously instituted their own measures abridging the general public’s ability to speak and express.<sup>6</sup> State control of speech and expression developed and spread, governmental actors imposed harsh punishments upon people who defied these restrictions, and the revolutionary assurances of legally protected communications soon became a distant and presumably unobtainable memory.<sup>7</sup>

This article looks closely at this centuries-old phenomenon and proposes some explanations for its recurrence. By studying six revolutions that began with popular demands for greater freedom of expression and pledges from revolutionary leaders to enhance this liberty, and concluded with a state-inflicted backlash against freedom of expression shortly after the revolution ended, this article examines the mechanics of free expression’s “first in, first out” role in these struggles. Discerning common trends among these revolutions that vary so greatly in time period, geographic area, and affected culture sheds some light upon freedom of expression’s apparent role as a promise that revolutionary leaders easily make and easily break, and as an objective that many citizens easily abandon in post-revolutionary societies.

Part I of this article discusses the central role that freedom of expression played as a popular demand and a political promise in the buildup to the American Revolution of 1783, the French Revolution of 1789, the Russian Revolution of 1905, the Cuban Revolution of 1959,

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3. *See infra* Part I.

4. *See infra* Part I.

5. *See discussion infra* Part II.

6. *See infra* Part II.

7. *See infra* Part II.

and the “Arab Spring” revolutions of 2011 in Egypt and Tunisia.<sup>8</sup> Part II moves to the aftermath of these six revolutions, and explores the various limitations and punishments that the post-revolutionary governments installed to abridge the freedom of expression that these leaders had so recently pledged to protect.<sup>9</sup> Lastly, Part III draws upon this historical summary to describe common factors and trends leading to the rapid post-revolutionary reduction of legal protections for speech and expression.<sup>10</sup>

This examination proves that throughout the centuries, and across a tremendous range of nations and cultures, revolutionary leaders who vow legal protections for freedom of expression utilize similar devices of power and play upon analogous popular sympathies to rapidly retract this promised freedom without sparking a new rebellion. Through this discussion, this article illuminates larger truths about the spectrum of needs among citizens in a post-revolutionary society, and the overall value within this spectrum that the public generally places upon freedom of expression in their daily lives.

## I. FIRST IN: PRE-REVOLUTIONARY DEMANDS AND REVOLUTIONARY PROMISES OF FREEDOM OF EXPRESSION

### A. *North America, 1783*

Freedom of expression was far from a foreign concept in colonial America.<sup>11</sup> On the contrary, historical evidence reveals that American revolutionaries rebelling against the British Crown believed they were preserving a right of Englishmen that existed to a certain extent in law and to a greater extent in practice.<sup>12</sup> English legal scholar William Blackstone, in his 1769 treatise *Commentaries on the Laws of England*, declared freedom of the press “essential to the nature of a free state.”<sup>13</sup> Even earlier, in the mid-1690s, the English Parliament had rejected a proposal to renew the governmental system of “licensing” all printed texts from any British subject before publication, a practice that had

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8. *See infra* Part I.

9. *See infra* Part II.

10. *See infra* Part III.

11. ALEXANDER MEIKLEJOHN, *POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE* 21 (1965).

12. KEITH WERHAN, *FREEDOM OF SPEECH: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION* 1 (2004).

13. WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* vol. IV, at 151 (1978).

existed in Great Britain for more than a century.<sup>14</sup> The Declaration of Rights in 1689 prevented prosecution of any British subject petitioning the King regarding a perceived royal wrongdoing.<sup>15</sup> Furthermore, members of Parliament, as the representatives of the people, held immunity from prosecution for statements made about governmental leaders, current events, and other matters of governance.<sup>16</sup>

On the other hand, as Professor Leonard Levy and other scholars have pointed out, the laws of colonial America did not honor a right to free expression that comes remotely close to today's safeguards under the First Amendment of the United States Constitution.<sup>17</sup> Instead, the prevailing legal views of the colonial era permitted the government to punish a wide range of post-spoken or post-publication forms of expression.<sup>18</sup> For example, English common law recognized the crime of seditious libel, punishing subjects of the Crown who criticized the government to the point of lowering its esteem in the public eye.<sup>19</sup> Truth of the critique was not a viable defense.<sup>20</sup> Further chilling speech and expression was the transgression of "constructive treason," allowing the government to prosecute for the high crime of treason any individual who expressed anti-government sentiments.<sup>21</sup> Even Blackstone wrote that freedom of the press did not protect against

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14. David S. Bogen, *The Origins of Freedom of Speech and Press*, 42 MD. L. REV. 429, 443 (1983). However, attempts to reintroduce licensing or other forms of government-held prior restraints continued for more than two decades after Parliament rejected renewal of the licensing act. *Id.* at 444.

15. An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown, 1689, Bill of Rights (Eng.) ("That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.").

16. WERHAN, *supra* note 12, at 1.

17. *E.g.*, JAMES A. CURRY, RICHARD B. RILEY & RICHARD M. BATTISONI, CONSTITUTIONAL GOVERNMENT: THE AMERICAN EXPERIENCE 436–38 (1989); LEONARD LEVY, LEGACY OF SUPPRESSION: FREEDOM OF SPEECH AND PRESS IN EARLY AMERICAN HISTORY 19–20, 55, 85–86 (1960); ANTHONY LEWIS, FREEDOM FOR THE THOUGHT THAT WE HATE: A BIOGRAPHY OF THE FIRST AMENDMENT 3 (2007) ("Colonial America began with little tolerance of dissent."); Mark P. Denbeaux, *The First Word of the First Amendment*, 80 NW. U. L. REV. 1156, 1173–74 (1986).

18. WERHAN, *supra* note 12, at 6 ("Mainstream legal thought in the American colonies, as in England, assumed not only that individuals were free to speak their minds, but also that they were legally accountable for the harmful tendencies of their speech.").

19. RONALD J. KROTOSZYNSKI, RECLAIMING THE PETITION CLAUSE: SEDITIOUS LIBEL, "OFFENSIVE" PROTEST, AND THE RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES 74 (2012).

20. Ronald W. Eades, *The Control of Seditious Libel as a Basis for the Development of the Law of Obscenity*, 11 AKRON L. REV. 29, 32 (1977).

21. ALFRED H. KNIGHT, THE LIFE OF THE LAW: THE PEOPLE AND CASES THAT HAVE SHAPED OUR SOCIETY, FROM KING ALFRED TO RODNEY KING 143 (1996).

“censure for criminal matter” after publication.<sup>22</sup>

In spite of these legal limits, however, robust discourse about matters of public concern existed largely unfettered in the thirteen colonies.<sup>23</sup> In fact, Professor Keith Werhan notes that speech and expression in the colonies likely “was far freer than in the mother country.”<sup>24</sup> One can witness the truth of this statement within the outrage among so many American colonists after Great Britain used the “Intolerable Acts” to limit town meetings in Massachusetts, demonstrating that the colonists already recognized a tradition of open gatherings in which individuals spoke without censorship about political affairs.<sup>25</sup> Similarly, the fact that the revolutionary leaders openly discussed their opposition to the new British laws in convocations from the Stamp Act Congress to the First Continental Congress—and voiced that opposition without facing conviction for treason—indicates that an atmosphere of at least some of freedom expression existed in the colonies before the Revolution even began.<sup>26</sup>

England’s geographic distance from North America caused unwieldy governance in which the colonists could to a certain extent ignore the laws and precepts of England.<sup>27</sup> Historians generally accept that this distance led to the growth of a separate American identity, strengthening the overall belief that revolution against the Crown was necessary to retain that individuality in the world.<sup>28</sup> Free speech and

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22. BLACKSTONE, *supra* note 13, at 151–52.

23. See, e.g., DAVID A. COPELAND, *DEBATING THE ISSUES IN COLONIAL NEWSPAPERS: PRIMARY DOCUMENTS ON EVENTS OF THE PERIOD 10–12* (2000) (listing and quoting excerpts from several publically published and disseminated defenses of freedom of speech, the press, and general expression in the colonies); MICHAEL KENT CURTIS, “THE PEOPLE’S DARLING PRIVILEGE”: STRUGGLES FOR FREEDOM OF EXPRESSION IN AMERICAN HISTORY 46 (2000); LARRY ELDRIDGE, *A DISTANT HERITAGE: THE GROWTH OF FREE SPEECH IN EARLY AMERICA* 3 (1994) (“[C]olonists experienced a dramatic expansion of their freedom to criticize government and its officials across the seventeenth century.”); Philip A. Hamburger, *Natural Rights, Natural Law, and American Constitutions*, 102 *YALE L.J.* 907, 911 (1993) (stating that some Americans around the time of the Revolution went as far as calling for “a freedom to speak and publish as one pleases”); Bogen, *supra* note 14, at 433–34 (describing the success of colonial local assemblies in establishing guarantees for free expression in legislative debate, paralleling the British parliamentary privilege).

24. WERHAN, *supra* note 12, at 6.

25. See, e.g., KENNETH J. MOYNIHAN, *A HISTORY OF WORCESTER 1674–1848*, at 72–73 (describing one Massachusetts town’s rebellion against this act, including creating new local political institutions that could hold meetings about the issues of the day).

26. JOSEPH C. MORTON, *THE AMERICAN REVOLUTION* 33–35 (2003); EDWARD COUNTRYMAN, *THE AMERICAN REVOLUTION* 58 (2003).

27. *Id.* at 33–34.

28. *Id.*; see also ROBERT B. EKELUND, JR. & ROBERT F. H. .BERT, *A HISTORY OF ECONOMIC THEORY AND METHOD* 64 (6th ed. 2014).

expression in a higher degree than what English common law specifically allowed was part of that new American identity.<sup>29</sup> Many of the American Revolution's intellectual leaders were well-versed in the philosophers of the European Enlightenment movement, individuals such as Thomas Hobbes, John Locke, and Baron de Montesquieu.<sup>30</sup> Overall, Enlightenment theorists held as a central precept that the best governments were based on principles of reason and rationale rather than absolute authority and tradition.<sup>31</sup> Extending this concept into practical governance, many Enlightenment writers stated that good governments protected certain natural laws, rights that inherently belong to all men.<sup>32</sup> Early American leaders generally agreed that at least some degree of freedom of expression was a natural law that government needed to safeguard.<sup>33</sup>

Notably, these individuals typically did not call for unlimited freedom of speech and expression.<sup>34</sup> However, most American revolutionaries of this era perceived free speech and expression as a natural law and demanded the formation of a government that would promise protection of those inherent liberties.<sup>35</sup> An example of this

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29. See *supra* note 23 and accompanying text. Another key sign pointing to the increasing colonial desire for freedom of expression came from the trial of printer John Peter Zenger for seditious libel in 1735. Zenger was acquitted when twelve New York jurors ignored the judge's instructions regarding the crime of seditious libel, adopting instead the arguments raised by Zenger's lawyers that the truth of Zenger's statements against the colonial governor general provided a valid defense. See ARTHUR M. SCHLESINGER, *THE BIRTH OF THE NATION* 163 (1969). See generally A BRIEF NARRATIVE OF THE CASE AND TRYAL OF JOHN PETER ZENGER, PRINTER OF THE *NEW-YORK WEEKLY JOURNAL*: WITH RELATED DOCUMENTS (2010). Still another influential defense of free expression came from Benjamin Franklin, whose *Apology for Printers* in 1731 defended the dissemination of multiple competing viewpoints as benefiting society overall. ENCYCLOPEDIA OF AMERICAN JOURNALISM 108–9 (Stephen L. Vaughn ed., 2008).

30. See, e.g., JACK N. RAKOVE, *ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION* 13, 18–19 (1996); Bruce W. Sanford & Jane E. Kirtley, *The First Amendment Tradition and its Critics*, in *THE PRESS* 264 (Geneva Overholser & Kathleen Hall Jamieson eds., 2005).

31. See GERALD F. GAUS, *CONTEMPORARY THEORIES OF LIBERALISM: PUBLIC REASON AS A POST-ENLIGHTENMENT PROJECT* 1–2, 4–5 (2003).

32. See MURRAY N. ROTHBARD, *ECONOMIC THOUGHT BEFORE ADAM SMITH: AN AUSTRIAN PERSPECTIVE ON THE HISTORY OF ECONOMIC THOUGHT* vol. I, at 369 (1995).

33. Hamburger, *supra* note 23, at 919.

34. Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 *IND. L.J.* 1, 22 (1971); LEVY, *supra* note 17, at vii.

35. See, e.g., CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* 132–33 (1993) (stating that at minimum, the Framers of the United States Constitution and the Bill of Rights wanted to prevent the government from enacting laws that would “shut off dissent or to insulate itself from criticism”); *THE UNITED STATES CONSTITUTION: THE FIRST 200 YEARS* 43 (Richard C. Simmons ed., 1989) (“During the subsequent congressional debate over the Bill of Rights, [James] Madison identified freedom of speech and of the press as among ‘the

commitment comes from the First Continental Congress's *Appeal to the Inhabitants of Quebec* in 1774, which, on the topic of freedom of the press, states:

The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed and intimidated, into more honourable and just modes of conducting affairs.<sup>36</sup>

One can reasonably draw parallels between this promise of a new government guaranteeing freedom of expression and the far more famous promises of these liberties in the Constitution and the First Amendment of the Bill of Rights. For example, the Constitution's definition of the crime of treason is considerably more limited than the English common law definition, guarding against the offense of "constructive treason" that hampered free speech and expression under British rule.<sup>37</sup> Likewise, the Constitution's "Speech and Debate Clause" provides members of Congress immunity from prosecution for remarks made in carrying out their legislative duties, a carryover from the similar privilege in English common law.<sup>38</sup>

Yet no promise to preserve freedom of speech and expression resonated more than the First Amendment's guarantee of these liberties, a statement beginning with the pronouncement that "Congress shall make no law" abridging the rights protected therein.<sup>39</sup> As discussed earlier, the intent behind this broad and seemingly definitive language likely was not as absolute as the words outwardly imply.<sup>40</sup> Still, the mere presence of protections for speech and the press

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most valuable on the whole list'."); STEPHEN J. HEYMAN, *FREE SPEECH AND HUMAN DIGNITY* 44 (2008) (stating that although the Framers understood that some speech could be regulated to protect other rights, freedom of speech was at its core a natural right).

36. Letter from the Continental Congress to the Inhabitants of the Province of Quebec (Oct. 26, 1774), reprinted in NEIL H. COGAN, *CONTEXTS OF THE CONSTITUTION* 693, 695 (1999).

37. U.S. CONST. art. III, § 3, cl. 1.

38. U.S. CONST. art. I, § 6, cl. 1.

39. U.S. CONST. amend. I.

40. However, some of the Framers pushed for considerably broader constitutional language regarding the protections of speech and expression. For instance, James Madison's original version of what would become the First Amendment "impl[ied] a bar on all federal authority respecting speech of press." LEVY, *supra* note 17, at 279, 278–80. During the Constitutional Convention itself, Elbridge Gerry and Charles Pinckney sought to introduce a

at the outset of the Bill of Rights — a document that many revolutionary leaders demanded before they would agree to the Constitution on the whole — represents a substantial vow from the governors of this new nation to protect these rights for all of its citizens.

*B. France, 1789*

Much like the desire for protecting freedom of expression manifested itself during discussions about the Stamp Act and other financial matters prior to the American Revolution, one of the first outcries for freedom of political expression in France arose out of fiscal issues. By the 1780s, France's economic situation was perilous, a condition due largely to the nation's participation in several costly wars and the extravagance of the royal court.<sup>41</sup> When King Louis XVI summoned the Estates-General—a political body that purportedly represented the interests of the clergy, the nobility, and the common people of France—to chart France's financial future, national elections for representatives were necessary since this legislative entity had not met since 1614.<sup>42</sup>

During these elections, Louis XVI took the surprising step of suspending censorship of publications, even allowing writings that criticized the monarchy.<sup>43</sup> As a result of the king's decision, France was deluged with pamphlets and newspapers calling for a social and economic overhaul of the entire country.<sup>44</sup> This concept of a free press went against the historic limitations on spoken or printed words that defiled certain sacrosanct aspects of French life, particularly the Catholic clergy—who were seen as guardians of moral, honorable, and orderly living—and the monarchy, viewed as the supreme authority safeguarding this traditional way of life.<sup>45</sup>

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provision that freedom of the press “be inviolably preserved.” Fred B. Hart, *Power of Government Over Speech and Press*, 29 YALE L.J. 410 (1920).

41. Eugene Nelson White, *The French Revolution and the Politics of Government Finance, 1770–1815*, 55 J. ECON. HIST. 227, 229 (1995); Thomas J. Sargent & Francois R. Velde, *Macroeconomic Features of the French Revolution*, 103 J. POL. ECON. 474, 474–75 (1995).

42. FLORIN AFTALION, *THE FRENCH REVOLUTION: AN ECONOMIC INTERPRETATION* 29 (1987).

43. A COMPANION TO THE FRENCH REVOLUTION 443 (Peter McPhee ed., 2012); SEAN CONNOLLY, *WITNESS TO HISTORY: THE FRENCH REVOLUTION* 10 (2003).

44. CONNOLLY, *supra* note 43, at 10.

45. See generally CHARLES WALTON, *POLICING PUBLIC OPINION IN THE FRENCH REVOLUTION: THE CULTURE OF CALUMNY AND THE PROBLEM OF FREE SPEECH* 17–37 (2009);

However, the desire to speak and publish freely was not foreign to French intellectuals of this era. Inspired by many of the same Enlightenment philosophers who instigated the American movement for independence, a growing number of French thinkers were by this point advocating for the reasoned governance that Voltaire, Montesquieu, Rousseau, and their brethren had supported.<sup>46</sup> State-sponsored censorship of all opposing views was, to them, an example of irrational government.<sup>47</sup> The success of the American Revolution in toppling a regime that was perceived as illogical only buoyed the growing spirit in France that complete social change, including increased legal protections for speech and expression, was possible now.<sup>48</sup>

Among the greatest champions of freedom of expression was the newspaper publisher Jacques-Pierre Brissot.<sup>49</sup> In 1784, Brissot had served time in the infamous French prison, the Bastille, for publishing pamphlets criticizing the government in general and Queen Marie Antoinette in particular.<sup>50</sup> After his release, he traveled to the fledgling United States of America.<sup>51</sup> When Louis XVI announced that he would convene the Estates-General, however, Brissot returned to France, launching a newspaper titled *The French Patriot* in the summer of

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Esther Janssen, *Limits to Expression on Religion in France*, 5 J. EUR. STUD. 22, 24–25 (2009), <http://www.ivir.nl/medewerkerpagina/janssen> (noting that Catholicism functioned as the official state religion of France until the Revolution, and that France criminalized the offense of blasphemy against the church and its values until this law was abolished in 1791).

46. See ARTHUR DONOVAN, ANTOINE LAVOISIER: SCIENCE, ADMINISTRATION, AND REVOLUTION 247 (1993); Harold J. Berman, *Law and Belief in Three Revolutions*, 18 VAL. U. L. REV. 569, 616 (1984).

47. Again, however, these philosophers did not advocate for an absolute prohibition of restrictions upon speech and expression. Instead, they generally supported the notion that the general public's ability to speak and express could be lawfully abridged when such speech and expression could legitimately damage the state. See, e.g., Helena Rosenblatt, *Rousseau, Constant, and the Emergence of the Modern Notion of Freedom of Speech*, in FREEDOM OF SPEECH: THE HISTORY OF AN IDEA 133–36 (Elizabeth Powers ed., 2011).

48. Susheel K. Sharma, *The American War of Independence and the French Revolution: A Study in Influence*, in THE FRENCH REVOLUTION: IDEOLOGY AND INFLUENCE ON LITERATURE 61 (T.R. Sharma ed., 1991).

49. Jonathan Israel, *Revolutionary Ideas: An Intellectual History of the French Revolution*, INST. FOR ADVANCED STUDY, Spring 2014, <https://www.ias.edu/ias-letter/israel-revolutionary-ideas> (last visited Mar. 5, 2016).

50. For one of several discussions about the impact of this prison term upon Brissot's revolutionary inclinations, see Simon Burrows, *The Innocence of Jacques-Pierre Brissot*, 46 HISTORICAL J. 843, 845, 853–54 (2003). Ultimately, the author concludes that “[Brissot's] arbitrary arrest, together with the calumnies and evidence fabricated against him, had helped to forge the revolutionary.” *Id.* at 871.

51. THE OXFORD HANDBOOK OF THE FRENCH REVOLUTION 294 (David Andress ed., 2015) [hereinafter HANDBOOK OF THE FRENCH REVOLUTION].

1789.<sup>52</sup> Around that same time, he submitted a treatise to the Estates-General in which he declared liberty of the press “a natural right of man.”<sup>53</sup> In this document, he also defended preserving the theatre’s freedom from censorship, stating that drama could greatly influence the citizenry’s comprehension about matters of public concern.<sup>54</sup>

Brissot was hardly alone in this position.<sup>55</sup> As the debates within the Estates-General mushroomed from questions about France’s economic problems into broader social and political issues, it became increasingly clear that many individuals supported loosening restraints on free speech and expression.<sup>56</sup> By the summer of 1789, free speech and expression represented one of several ideas that the existing regime could no longer afford to ignore.<sup>57</sup>

Importantly, though, France’s outspoken proponents of free speech and expression had varying ideas about what this concept should mean. Brissot represented one pole of this debate, joined by individuals like philosopher Jacques Andre Naigeon and dramatist Marie-Joseph Chénier in calling for a virtually absolute legal protection of free speech and expression.<sup>58</sup> Most of the French revolutionaries, however, advocated for a less extreme interpretation of these principles, warning that unlimited freedom of speech and expression could encourage deception, incitement to violence, and other ugly results.<sup>59</sup> A number of French thinkers retained a belief that

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52. ENCYCLOPEDIA OF THE AGE OF POLITICAL REVOLUTIONS AND NEW IDEOLOGIES, 1760–1815, at 87 (Gregory Fremont-Barnes ed., vol. 1, 2007) [hereinafter ENCYCLOPEDIA OF POLITICAL REVOLUTIONS].

53. Israel, *supra* note 49.

54. *Id.*

55. *See, e.g.*, A COMPANION TO THE FRENCH REVOLUTION note 43, at 443 (“[W]hen the Estates-General convened, several individuals challenged existing restrictions on newspapers (royal privileges and censorship) by publishing newspapers to report on events regardless of the consequences. By the summer of 1789 all such restrictions had fallen by the wayside.”).

56. *See, e.g.*, Berman, *supra* note 46, at 620 n.60 (quoting E.J. LOWELL, THE EVE OF THE FRENCH REVOLUTION 324 (1892) (“In the decay of religious ideas, the Frenchmen of the eighteenth century had set up a comparison independent of revelation. They had found it in public opinion. The sociable population of Paris was ready to accept the common voice as arbiter.”)).

57. *See* Israel, *supra* note 49 (“By July 1789, the month of the storming of the Bastille, the question was no longer whether revolutionary France should possess freedom of expression and of the press—all the revolutionaries then agreed that it should—but rather whether this freedom required limits.”).

58. *Id.*; SUSAN MASLAN, REVOLUTIONARY ACTS: THEATER, DEMOCRACY, AND THE FRENCH REVOLUTION 30–31 (2005).

59. *See, e.g.*, HANDBOOK OF THE FRENCH REVOLUTION, *supra* note 51, at 375; Israel, *supra* note 49; WALTON, *supra* note 45, at 39, 47.

the government could still punish “calumny”—speech or expression that caused injury to the broader society—as long as the state did not engage in pre-publication censorship.<sup>60</sup>

Nevertheless, by the time Louis XVI dismissed and banished his finance minister on July 11, 1789, there was little doubt that free speech and expression were high on the list of demands from the Frenchmen calling for change.<sup>61</sup> Three days later, the storming of the Bastille highlighted a bloody revolt on the streets of Paris, ultimately forcing Louis XVI to yield to the sovereignty of the people.<sup>62</sup> As the revolution spread into the French countryside and peasants took up arms against their lords, the National Constituent Assembly—the new configuration of the Estates-General<sup>63</sup>—issued a declaration that the feudal system in France was over.<sup>64</sup>

The revolution’s most important recognition of free speech and expression, however, emerged later that month. On August 26, the Assembly introduced the Declaration of the Rights of Man and of the Citizen, proclaiming the principles by which post-revolutionary France would abide.<sup>65</sup> Two of its seventeen articles centered specifically on free speech and expression. Article 10 stated that no person “should be disturbed for his opinions, even in religion, provided that their manifestation does not trouble public order as established by law.”<sup>66</sup> Even more emphatically, Article 11 declared “free communication of thoughts and opinions is one of the most precious of the rights of man. Every citizen may therefore speak, write, and print freely, if he accepts his own responsibility for any abuse of this liberty in the cases set by the law .”<sup>67</sup>

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60. WALTON, *supra* note 45, at 4–5.

61. *See id.* at 5 (noting that all three estates in the Estates-General possessed publically recognized advocates for freedom of the press); Israel, *supra* note 49; A COMPANION TO THE FRENCH REVOLUTION, *supra* note 43, at 499 (stating that freedom of expression and opinion was one of the bedrock goals of the French Revolution).

62. ENCYCLOPEDIA OF POLITICAL REVOLUTIONS, *supra* note 52, at 65–67.

63. This represented far more than a mere change of name. By assuming the title of a “national assembly,” this group of deputies had declared itself a legislative body deriving power from the French populace, rather than taking authority exclusively from the king. *Id.* at 275.

64. *Id.* at 276.

65. *Id.*

66. D . . .claration des Droits de l’Homme et du Citoyen de 1789 art. X (Declaration of the Rights of Man and of the Citizen 1789 art. X) (Fr.) (“Nul ne doit être inqui . . . t . . . pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l’ordre public . . . tabli par la Loi.”).

67. *Id.* art. XI (“La libre communication des pens . . . es et des opinions est un des droits

Thus, the stage was set for France's future. Speech and expression were officially proclaimed to be fundamental values in French society and in the world as a whole. However, these preservations came with limits, as the government could still outlaw and punish abusive speech and expression that "troubled public order."<sup>68</sup> However, the question of how this balance would play out between the French citizenry and the newly constituted French government remained to be seen.

### C. *Russia, 1905*

Social unrest plagued the Russian Empire for many years before the Russian Revolution of 1905.<sup>69</sup> A combination of harmful factors triggered this discontent with the czarist government, including famine, unemployment, government attempts at ethnic cleansing throughout the empire, state-imposed restrictions on academic freedom, and a series of largely disastrous attempts to industrialize Russia too quickly.<sup>70</sup> Desperate for reform, peasant farmers staged protests, industrial workers formed illegal labor unions and engaged in large-scale strikes, university students drafted petitions and pamphlets condemning the czarist regime, and people from all walks of life marched in solidarity—and even engaged in full-scale riots—against the existing governmental conditions.<sup>71</sup> Even state-inflicted measures as extreme as forced military service, expulsion, and exile for individuals engaging in these protests failed to end this growing stream of anti-government sentiment.<sup>72</sup>

All of these tensions came to a head on January 22, 1905.<sup>73</sup> Approximately 150,000 people marched through St. Petersburg to the czar's Winter Palace, carrying a petition stating that they would rather

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les plus pr. . .cieux de l'Homme: tout Citoyen peut donc parler, . . .crire, imprimer librement, sauf à r. . .pondre de l'abus de cette libert. . . , dans les cas d. . .termin. . .s par la Loi.”).

68. *Id.* art. X.

69. *See e.g.*, William Elroy Curtis, *The Revolution in Russia*, NAT'L GEO. MAG., May 1907, at 302.

70. COMPETING VOICES FROM THE RUSSIAN REVOLUTION 7–8 (Michael C. Hickey ed., 2011); JACKSON J. SPIELVOGEL, WESTERN CIVILIZATION 854–56 (8th ed. 2009); SHEILA FITZPATRICK, THE RUSSIAN REVOLUTION 28 (2008); James D. White, *The 1905 Revolution in Russia's Baltic Provinces*, in THE RUSSIAN REVOLUTION OF 1905: CENTENARY PERSPECTIVES 59–61 (Anthony Heywood & Jonathan D. Smele, eds., 2005); RICHARD PIPES, THE RUSSIAN REVOLUTION 4–9, 119–20, 119, 143 (1990).

71. *See e.g.*, SAMUEL D. KASSOW, STUDENTS, PROFESSORS, AND THE STATE IN TSARIST RUSSIA 251–55 (1989); PIPES, *supra* note 70, at 4–9; FITZPATRICK, *supra* note 70, at 28; SPIELVOGEL, *supra* note 70, at 854–56.

72. *See e.g.*, PIPES, *supra* note 70, at 6–8.

73. FITZPATRICK, *supra* note 70, at 33.

die than continue living in conditions of poverty and oppression, and containing several articles calling for change.<sup>74</sup> The second article in the document demanded “[i]mmediate proclamation of the freedom and inviolability of the person, of freedom of speech and of the press, of freedom of assembly, and of freedom of conscience in matters of religion.”<sup>75</sup>

““Here we seek our last salvation,” the petition concluded. “Do not refuse to come to the aid of your people . . . . Tear down the wall that separates you from your people and let it rule the country together with you.”<sup>76</sup> Nothing in the petition called for Czar Nicholas II to abdicate his throne.<sup>77</sup> Nevertheless, the czar considered the massive assemblage threatening, sending his armed troops into the streets.<sup>78</sup> Shots were fired, and by the end of the day, more than a hundred of the unarmed protestors lay dead, with many more wounded.<sup>79</sup>

Soon after these killings, more than 400,000 Russian industrial workers went on strike.<sup>80</sup> Peasants burned the homes of noblemen and engaged in other forms of protest, refusing to cease even after imperial police imposed harsh penalties upon them.<sup>81</sup> Russian sailors mutinied on the battleship *Potemkin* in the Black Sea.<sup>82</sup> Some universities shut their doors as students protestors walked out of their classrooms.<sup>83</sup> Middle-class workers demanded that the czar create a constituent assembly to ensure that the government respected the peoples’ wishes.<sup>84</sup>

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74. See PIPES, *supra* note 70, at 24–25.

75. *Petition Prepared for Presentation to Nicholas II, January 9, 1905 (Bloody Sunday)*, [http://academic.shu.edu/russianhistory/index.php/Workers%27\\_Petition,\\_January\\_9th,\\_1905\\_%28Bloody\\_Sunday%29](http://academic.shu.edu/russianhistory/index.php/Workers%27_Petition,_January_9th,_1905_%28Bloody_Sunday%29).

76. *Id.*

77. *See id.*

78. PIPES, *supra* note 70, at 25.

79. AMY NELSON, *MUSIC FOR THE REVOLUTION: MUSICIANS AND POWER IN EARLY SOVIET RUSSIA* 6 (2004); SIDNEY HARCAVE, *FIRST BLOOD: THE RUSSIAN REVOLUTION OF 1905* 98–117 (1964).

80. PIPES, *supra* note 70, at 26.

81. ABRAHAM ASCHER, *THE RUSSIAN REVOLUTION: A BEGINNER’S GUIDE* 31–32 (2014); RICHARD S. WORTMAN, *SCENARIOS OF POWER: MYTH AND CEREMONY IN THE RUSSIAN MONARCHY FROM PETER THE GREAT TO THE ABDICATION OF NICHOLAS II* 362 (2013).

82. *See generally* NEAL BASCOMB, *RED MUTINY: ELEVEN FATEFUL DAYS ON THE BATTLESHIP POTEKIN* (2008) (describing the mutiny and its effect of emboldening leaders of the Revolution of 1905).

83. KASSOW, *supra* note 71, at 195–97.

84. DON C. RAWSON, *RUSSIAN RIGHTISTS AND THE REVOLUTION OF 1905* 26 (1995); BASCOMB, *supra* note 82, at 85, 204.

At first, Nicholas II ardently resisted adopting any changes that would limit his power to rule.<sup>85</sup> Ultimately, however, the effects of nationwide strikes and persistent violence left him no other choice.<sup>86</sup> On October 17, 1905, the czar reluctantly issued a document now known as the “October Manifesto.”<sup>87</sup> At the outset of this declaration, he guaranteed freedom of speech to all Russian citizens, along with the freedoms of assembly and association.<sup>88</sup> The manifesto also created a representative legislative body in Russia, an entity that allegedly would limit the czar’s previously unchecked power and give a new voice to the general population.<sup>89</sup>

The promises contained within this document effectively ended the Revolution of 1905.<sup>90</sup> Strikes ended, violent outbreaks subsided, students returned to their university classrooms, and an overall mood of celebration arose among the revolutionaries.<sup>91</sup> While they had not eliminated the existing regime, many of them believed that they had accomplished what they had set out to achieve: the assurance of fundamental individual liberties such as free speech and assembly, and the creation of a new governmental body that would be accountable to the people. Some revolutionary leaders, particularly the socialists, objected that the revolution had not succeeded, noting that the October Manifesto’s guarantee of free speech did not mean anything without concrete changes and pointing out that the new legislature still required the czar’s approval to pass laws.<sup>92</sup> Overall, though, many Russians seemed to believe that their revolutionary struggle had ended with

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85. See, e.g., PIPES, *supra* note 70, at 43 (describing the czar’s reluctance to cede his absolute power in the wake of Bloody Sunday); Curtis, *supra* note 69, at 304–05 (asserting that Nicholas II’s closest advisor frequently told the czar that absolute rule was a gift to him from God and could not be shared with the people).

86. KATHLEEN MALLEY-MORRISON, STATE VIOLENCE AND THE RIGHT TO PEACE: WESTERN EUROPE AND NORTH AMERICA 64 (2009) (stating that Nicholas II issued the October Manifesto as a compromise only after he realized that no other way to retain power existed); ASCHER, *supra* note 81, at 36 (stating that Grand Duke Nikolai Nikolaevch, one of Czar Nicholas II’s closest political advisors, threatened to shoot himself if the czar continued to refuse to compromise with the citizens).

87. WORTMAN, *supra* note 81, at 363; FITZPATRICK, *supra* note 70, at 33.

88. PIPES, *supra* note 70, at 43.

89. WORTMAN, *supra* note 81, at 363.

90. See FITZPATRICK, *supra* note 70, at 33–34; PIPES, *supra* note 70, at 44.

91. GEOFFREY A. HOSKING, THE RUSSIAN CONSTITUTIONAL EXPERIMENT: GOVERNMENT AND DUMA, 1907-1914 29 (1973) (stating that most local governments throughout Russia accepted the October Manifesto as an adequate plan for the government’s future); ASCHER, *supra* note 81, at 36 (“Within days, most workers, who were beginning to suffer great hardships, returned to their jobs, even though it was not clear what powers the Tsar retained.”).

92. BRUNO NAARDEN, SOCIALIST EUROPE AND REVOLUTIONARY RUSSIA: PERCEPTION AND PREJUDICE 214 (1992); RICHARD CHARQUES, THE TWILIGHT OF IMPERIAL RUSSIA 137 (1974).

triumph, and that days of far greater liberty lay ahead.<sup>93</sup>

#### *D. Cuba, 1959*

Most Cubans in the 1950s were not strangers to the concepts of protecting civil liberties, including freedom of expression.<sup>94</sup> As early as 1869, the Constitution of Cuba provided legal safeguards for this liberty, along with the freedoms of peaceable assembly, teaching, religion, petition, and the press.<sup>95</sup> The nation's revised Constitution of 1940 not only committed the government to preserving these freedoms, but added more individual liberties to the list as well, including the maintenance of free and open elections.<sup>96</sup> Most Cubans appeared to take tremendous pride in their Constitution of 1940 and the democratic society that it promoted.<sup>97</sup> “[Cuba] could rightfully claim its place alongside the select group of modern liberal constitutional democracies of the world,” explained historian Louis A. Perez in his book *On Becoming Cuban: Identity, Nationality, and Culture*. “Constitutional legality, free elections, freedom of speech, and a free press were attributes of advanced civilizations by virtue of which Cubans claimed membership.”<sup>98</sup>

One of the Constitution of 1940's surprising sponsors was Fulgencio Batista, a political strongman who had steered the nation's government since helping topple the nation's military regime in 1933.<sup>99</sup> Appointing himself chief of the armed forces, Batista was the obvious power behind the throne for every Cuban president until winning election to the presidency himself in 1940.<sup>100</sup> Still, his staunch support

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93. See HOSKING, *supra* note 91, at 29; ASCHER, *supra* note 81, at 36.

94. See LOUIS A. PEREZ, *ON BECOMING CUBAN: IDENTITY, NATIONALITY, AND CULTURE* 446–47 (2008); CLIFFORD L. STATEN, *THE HISTORY OF CUBA* 73 (2005); Nick Miroff, *In Havana, a Renovation in Marble—and Maybe in Spirit, Too*, WASH. POST (Jan. 30, 2015), [http://www.washingtonpost.com/world/the\\_americas/in-havana-a-renovation-in-marble—and-maybe-in-spirit-too/2015/01/29/8cd7a9f0-a723-11e4-a162-121d06ca77f1\\_story.html](http://www.washingtonpost.com/world/the_americas/in-havana-a-renovation-in-marble—and-maybe-in-spirit-too/2015/01/29/8cd7a9f0-a723-11e4-a162-121d06ca77f1_story.html).

95. See CONSTITUCION DE GUAIMARO, Apr. 10, 1869, art. 28.

96. CUBAN CONSTITUTION OF 1940, art. 33, art. 35, art. 36, art. 101, art. 102, <http://www.latinamericanstudies.org/constitution-1940.htm>.

97. See, e.g., SILVIA PEDRAZA, *POLITICAL DISAFFECTION IN CUBA'S REVOLUTION AND EXODUS* 41 (2007); K. LYNN STONER, *FROM THE HOUSE TO THE STREETS: THE CUBAN WOMAN'S MOVEMENT FOR LEGAL REFORM, 1898-1940* 183 (1991); Miroff, *supra* note 94 (describing the Constitution of 1940 as a “high-water mark” for recognizing civil liberties in Cuba).

98. PEREZ, *supra* note 94, at 446–47.

99. AVIVA CHOMSKY, *A HISTORY OF THE CUBAN REVOLUTION* 32 (2010).

100. DANIEL C. HELLINGER, *COMPARATIVE POLITICS OF LATIN AMERICA: DEMOCRACY AT LAST?* 285 (2014); *ENCYCLOPEDIA OF INSURGENCY AND COUNTERINSURGENCY* 61 (Spencer C. Tucker, ed., 2013) (hereinafter “ENCYCLOPEDIA OF INSURGENCY”); RICHARD GOTT, *CUBA: A NEW HISTORY* 142–44 (2005).

of the progressive new constitution encouraged many Cuban citizens.<sup>101</sup> A peaceful transfer of power after Batista lost the 1944 presidential election to Ramon Grau San Martin appeared to be an even greater symbol of stability and democratization in Cuban governance.<sup>102</sup>

Free elections occurred again in 1948, bringing into office a new president, Carlo Prío Socarras.<sup>103</sup> Yet Socarras and his administration soon found themselves mired in scandals and corruption, causing many Cubans to lose faith in their leadership.<sup>104</sup> Batista, who had moved to Florida after losing the 1944 election, returned to Cuba and announced his candidacy for the 1952 presidential race.<sup>105</sup> When it became obvious that he would lose, the man who had vehemently advocated for the Constitution of 1940 violated virtually every principle for which that document stood.<sup>106</sup> Four months before the Cuban election day, Batista staged a coup d'état, backed by both the Cuban military and the United States government.<sup>107</sup> Exactly one hour and seventeen minutes later, Batista was Cuba's new head of state.<sup>108</sup>

From 1952 onward, Batista's government increasingly suppressed the freedoms of speech, assembly, the press, and virtually every other civil liberties category that the Constitution of 1940 protected.<sup>109</sup> He promised to hold free elections in 1954, but his heavy-

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101. See CHOMSKY, *supra* note 99, at 32.

102. See *id.*

103. See THOMAS G. PATERSON, *CONTESTING CASTRO: THE UNITED STATES AND THE TRIUMPH OF THE CUBAN REVOLUTION* 26 (1995).

104. *Id.* (Grau and Prío swelled the civil service with political appointees eager to make money for themselves; public officials raided pension funds and the treasuries of the national, provincial, and municipal governments. The British Ambassador in Havana estimated that Prío himself stole \$90 million in public funds.”).

105. GOTT, *supra* note 100, at 146.

106. See *id.* When Batista learned that the nation's military officers were planning to stage a coup regardless of Batista's participation, he decided to place himself at the helm of the military's efforts. *Id.*

107. *Id.*; CHOMSKY, *supra* note 99, at 32 (“When Batista led a second coup in 1952, there was little organized opposition.”).

108. Richard Cavendish, *General Batista Returns to Power in Cuba*, HISTORY TODAY, March 2002, <http://www.historytoday.com/richard-cavendish/general-batista-returns-power-cuba>.

109. PATERSON, *supra* note 103, at 26–27; ENCYCLOPEDIA OF INSURGENCY, *supra* note 100, at 62; GOTT, *supra* note 100, at 146 (“After a perfunctory attempt to preserve the constitutional niceties, and to repeat his experience of the 1930s by finding a figleaf president, Batista appointed himself as chief of state . . . Much of the [C]onstitution of 1940 was suspended, but most people . . . gave the new government the benefit of the doubt.”). Among Batista's changes were a series of strict restrictions upon speech and expression, including a provision that allowed him to unilaterally suspend freedom of the press, speech, and assembly

handed tactics discouraged all potential opponents.<sup>110</sup> Ultimately, he ran unopposed.<sup>111</sup> To many Cubans, the values of liberty and democratization in which they had taken such pride were now obscured by a government that was an international embarrassment.<sup>112</sup>

This deeply felt discontent set the stage for a new face to abruptly arise on Cuba's political landscape: a young lawyer named Fidel Castro.<sup>113</sup> Beginning with a poorly planned, virtually suicidal attack on the army barracks in Santiago de Cuba on July 26, 1953, Castro dominated the opposition movement against Batista's dictatorship.<sup>114</sup> His rhetoric initially focused on restoring to Cuban citizens the freedoms that the Constitution of 1940 had guaranteed, the very liberties that Batista had eliminated.<sup>115</sup>

In short order, Castro was prosecuted for his role in the army barracks attacks and exiled to Mexico.<sup>116</sup> For the next two years, he stimulated support among individuals willing to engage in armed rebellion against the Batista government.<sup>117</sup> Plans in place, his supporters launched a series of guerrilla attacks throughout the nation, maneuvers that received substantial support from an underground press that glorified the fighters' actions.<sup>118</sup> As the revolutionaries

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at any time for a forty-five-day period. STATEN, *supra* note 94, at 80.

110. See JORGE I. DOMINGUEZ, *CUBA: ORDER AND REVOLUTION* 124 (2009).

111. *Id.* Four years later, the Cuban presidential elections featured two candidates opposing Batista, but the elections were an obvious farce that unsurprisingly returned Batista to power by a wide margin of victory. *Id.*

112. See, e.g., ENCYCLOPEDIA OF INSURGENCY, *supra* note 100, at 62.

113. See MAURICE HALPERIN, *THE RISE AND DECLINE OF FIDEL CASTRO: AN ESSAY IN CONTEMPORARY HISTORY* 13 (1972).

114. HALPERIN, *supra* note 113, at 9; CHOMSKY, *supra* note 99, at 36–38; Bryan Logan, *How Fidel Castro Rose to Power and Ruled Cuba for 5 Decades*, BUSINESS INSIDER, Jan. 13, 2015, <http://www.businessinsider.com/fidel-castros-life-and-rise-to-power-2015-1>.

115. One of Castro's primary messages in his now-legendary "History Will Absolve Me" speech in October 1953, delivered from prison after his arrest for leading the revolt against the army barracks, focused on reinstating the Constitution of 1940. See Rudo Kemper, *Cuban Memories: The Cuban Constitution of 1940, Then and Today*, U. MIAMI CUBAN HERITAGE COLLECTION, Oct. 14, 2010, <http://library.miami.edu/chc/2010/10/14/cuban-memories-the-cuban-constitution-of-1940-then-and-today/>.

116. CELESTINO HERES, *UNPARDONABLE CRIMES—THE LEGACY OF FIDEL CASTRO: UNTOLD TALES OF THE CUBAN REVOLUTION* 67 (2003).

117. KATIE MARSICO, *FIDEL CASTRO: CUBAN PRESIDENT AND REVOLUTIONARY* 36–38 (2010). Playing upon the notion that his July 26 attack on the army barracks was justified, Castro began calling his cause "the July 26 Movement." JULIA SWEIG, *INSIDE THE CUBAN REVOLUTION: FIDEL CASTRO AND THE URBAN UNDERGROUND* 6 (2009).

118. TIMOTHY P. WICKHAM-CROWLEY, *GUERRILLAS AND REVOLUTION IN LATIN AMERICA: A COMPARATIVE STUDY OF INSURGENTS AND REGIMES SINCE 1956* 16, 31–33, 174–78 (1992); SWEIG, *supra* note 117, at 47.

gained traction, Batista hastily restored constitutional guarantees, even removing press censorship in all but one province, trying desperately to curry the people's favor.<sup>119</sup>

Yet Castro's movement had gained too much support for the existing government to stop him now. Ultimately, Batista was forced to abdicate his presidency.<sup>120</sup> On New Year's Day in 1959, Castro's forces triumphantly claimed victory.<sup>121</sup> The next morning, in a lengthy speech at Cospedes Park in Santiago de Cuba, Castro laid out his visions for Cuba.<sup>122</sup> In doing so, he paid particular attention to the restoration of freedom of expression for all:

Now anyone may speak out, whether they are for or against. Anyone who wishes to do so may speak out. That was not the case here previously because until the present time, [Batista's followers] were the only ones [allowed] to speak out; only they spoke out. And they spoke against us. There will be freedom for those who speak in our favor and for those who speak against us and criticize us.<sup>123</sup>

These promises appeared to call back the values of the Constitution of 1940, the freedoms in which so many Cubans had taken great satisfaction.<sup>124</sup> All that remained to be answered was how Castro and his new government would put these vows into practice.

#### *E. Tunisia and Egypt, 2011*

On December 17, 2010, a 26-year-old Tunisian street vendor named Mohammed Bouazizi stood outside a provincial government building, doused gasoline over his body, and set himself on fire.<sup>125</sup> Earlier that day, a police officer had confiscated his supposedly unlicensed pushcart and the produce that Bouazizi was trying to sell.<sup>126</sup> When Bouazizi offered to pay a fine, the officer allegedly slapped him, spat in his face, and insulted his family.<sup>127</sup> Seeking to report the

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119. SWEIG, *supra* note 117, at 95–96.

120. ENCYCLOPEDIA OF MODERN DICTATORS: FROM NAPOLEON TO THE PRESENT 29 (2006).

121. HALPERIN, *supra* note 113, at 17–18.

122. FIDEL CASTRO READER 107 (David Deutschmann & Deborah Shnookal, eds., 2008).

123. *Id.* at 129.

124. *See supra* notes 94–98 and accompanying text.

125. Rania Abouzeid, *Bouazizi: The Man Who Set Himself and Tunisia on Fire*, TIME, (Jan. 21, 2011), [www.content.time.com/time/magazine/article/0,9171,2044723,00.html](http://www.content.time.com/time/magazine/article/0,9171,2044723,00.html).

126. *Id.*

127. *Id.*; *see also* Marc Fisher, *In Tunisia, Acts of One Fruit Vendor Sparks Wave of Revolution Through Arab World*, WASH. POST (Mar. 26, 2011), [www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-](http://www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-)

mistreatment, Bouazizi went to the provincial headquarters, only to find that the governmental officials had no interest in hearing his story.<sup>128</sup> Less than an hour later, he lit the flame that severely burned his body and led to his eventual death—and ignited a series of revolutions now known as the “Arab Spring” throughout North Africa and the Middle East.<sup>129</sup>

Bouazizi never set out to become a political martyr.<sup>130</sup> Nevertheless, his suicide proved to be the tipping point for several states whose citizens had long lived under autocratic regimes.<sup>131</sup> Zine al-Abidine Ben Ali had ruled Tunisia since 1987.<sup>132</sup> In Egypt, Hosni Mubarak had maintained power for an even longer period of time, enjoying a three-decade tenure in office.<sup>133</sup> Both of these leaders openly denied freedom of expression to their citizens, silencing opponents with harsh tactics.<sup>134</sup> Additionally, Mubarak and Ben Ali—along with other dictatorial leaders within this region—exploited claims that they were “protecting” their constituents from outside “threats” to establish domineering security regimes, impose “emergency” laws that remained in effect for decades, and other tactics designed to stifle any form of dissent.<sup>135</sup> In 2009, the United States ambassador to Tunisia sent a diplomatic cablegram stating: “Tunisia is a police state, with little freedom of expression or association, and

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revoluition-through-arab-world/2011/03/16/AFjfsuB\_story.html.

128. Fisher, *supra* note 127; Abouzeid, *supra* note 125.

129. Ivan Watson & Jomana Karadsheh, *The Tunisian Fruit Seller Who Kickstarted Arab Uprising*, CNN (Mar. 22, 2011), [www.cnn.com/2011/WORLD/meast/03/22/tunisia.bouazizi.arab.unrest/](http://www.cnn.com/2011/WORLD/meast/03/22/tunisia.bouazizi.arab.unrest/).

130. Abouzeid, *supra* note 125 (“Mohammed Bouazizi never set out to be a byword.”).

131. Allia Calkins, *A Rude Awakening: Free Speech and the Arab Spring*, VAND. POL. REV., Oct. 13, 2013, <http://www.vanderbiltpoliticalreview.com/a-rude-awakening-free-speech-and-the-arab-spring.html> (“This seemingly innocuous act set off a chain reaction that led to the fall of dictatorships in Tunisia, Libya, Egypt, and many other states in the Arab world.”).

132. *Profile: Zine al-Abidine Ben Ali*, BBC, June 20, 2011, [www.bbc.com/news/world-africa-12196679](http://www.bbc.com/news/world-africa-12196679).

133. *Profile: Hosni Mubarak*, BBC, Nov. 29, 2014, [www.bbc.com/news/world-middle-east-12301713](http://www.bbc.com/news/world-middle-east-12301713).

134. See, e.g., FRANK CASO, CENSORSHIP 81–84 (2008); BUILDING PEACE FROM WITHIN: AN EXAMINATION OF COMMUNITY-BASED PEACEBUILDING AND TRANSITIONS IN AFRICA 270–71 (Sylvester Bongani Maphosa, Laura DeLuca & Alphonse Keasley, eds., 2014) Nada Mrabet, *How Censorship Stifled Us in Tunisia*, TUNIS TIMES, Aug. 5, 2013, <http://www.thetunistimes.com/2013/08/opinion-how-censorship-stifled-us-in-tunisia-70902/>.

135. CASO, *supra* note 134, at 81 (“Following the assassination of Anwar Sadat in October 1981, his successor, Hosni Mubarak, declared a state of emergency . . . . The state of emergency was renewed in 1988 and remained in effect through 2007.”); NOURI GANA, THE MAKING OF THE TUNISIAN REVOLUTION: CONTEXTS, ARCHITECTS, PROSPECTS 244 (2013) (describing the Tunisian State of Emergency Law that existed under Ben Ali’s rule).

serious human rights problems.”<sup>136</sup> The same description would accurately depict Egypt during this time period as well.<sup>137</sup>

In a sense, the Arab Spring uprisings marked the first revolutions where the participants sought to break this culture of censorship by turning not only to the streets and public squares and traditional media sources, but also to the Internet.<sup>138</sup> Blogs, Facebook pages, Twitter feeds, online forums, and other forms of social media became havens for activists to protest existing methods of governance, make plans for large-scale public demonstrations, and discuss the values that they wanted a new government to achieve.<sup>139</sup> For example, it was a blogger who first uploaded to Facebook the video of Bouazizi setting himself on fire, leading to its widespread sharing on the Internet and, before long, mainstream media outlets.<sup>140</sup> Similarly, the initial mass protest in Egypt was advertised anonymously on Facebook, bringing together tens of thousands of people to protest Mubarak’s dictatorship.<sup>141</sup> Governmental attempts to remove online material criticizing the current regimes only increased the revolutionaries’ efforts to restore this information to the Internet.<sup>142</sup>

In Tunisia and Egypt, these calls for legally protected freedom of expression appeared to be particularly strong. “We were silent before,” one Tunisian citizen stated after Bouazizi’s death, “but Mohammed showed us that we must react.”<sup>143</sup> Broadly written statutes prohibiting

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136. See Amy Davidson, *Tunisia and Wikileaks* NEW YORKER, <http://www.newyorker.com/news/amy-davidson/tunisia-and-wikileaks>.

137. CIVIC ENGAGEMENT, AND CITIZEN JOURNALISM 2002 (2013); CASO, *supra* note 134, at 81–84.

138. For just a sampling of the recent literature on this topic, see ANDREW PETERSON & PAUL WARWICK, *GLOBAL LEARNING AND EDUCATION: AN INTRODUCTION* 66–68 (2014); PHILIP N. HOWARD ET AL., *OPENING CLOSED REGIMES: WHAT WAS THE ROLE OF SOCIAL MEDIA DURING THE ARAB SPRING* (2011), [http://pitpi.org/wp-content/uploads/2013/02/2011\\_Howard-Duffy-Freelon-Hussain-Mari-Mazaid\\_pITPI.pdf](http://pitpi.org/wp-content/uploads/2013/02/2011_Howard-Duffy-Freelon-Hussain-Mari-Mazaid_pITPI.pdf); Tim Eaton, *Internet Activism and the Egyptian Uprisings: Transforming Online Dissent Into the Offline World*, 9 WESTMINSTER PAPERS IN COMMUNICATION AND CULTURE 3 (2013), [https://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0004/220675/WPCC-vol9-issue2.pdf](https://www.westminster.ac.uk/_data/assets/pdf_file/0004/220675/WPCC-vol9-issue2.pdf).

139. See note 138, *supra*. In fact, even before the Arab Spring revolutions occurred, active bloggers in Egypt and Tunisia were adamantly advocating for governmental reform. HOWARD ET AL., *supra* note 138, at 6.

140. MUHAMAD OLIMAT, *ARAB SPRING AND ARAB WOMEN* 10 (2013).

141. Jose Antonio Vargas, *Spring Awakening: How an Egyptian Revolution Began on Facebook*, N.Y. TIMES (Feb. 17, 2012), <http://www.nytimes.com/2012/02/19/books/review/how-an-egyptian-revolution-began-on-facebook.html>; Sam Gustin, *Social Media Sparked, Accelerated Egypt’s Revolutionary Fire*, WIRED, Feb. 11, 2011, <http://www.wired.com/2011/02/egypts-revolutionary-fire>.

142. See HOWARD ET AL., *supra* note 138, at 7–17.

143. Abouzeid, *supra* note 125.

vaguely defined classes of expression became particular enemies of the protestors. Article 98(f) of the Egyptian penal code, for instance, criminalized any communication that “exploits religion in order to promote extremist ideologies by word of mouth or in any other manner, with a view to stirring up sedition, disparaging or contempt of any divine religion or its adherents, or prejudicing national unity.”<sup>144</sup> Egyptian law also banned any expressions that “insulted” Egyptian public officials, foreign diplomats, or foreign heads of state.<sup>145</sup> Similarly, Tunisia possessed statutes such as Article 121.3 of their penal code, which allowed sentences of up to five years in prison for distributing or displaying any publications adjudged to “disturb public order or undermine public morality.”<sup>146</sup>

In January 2011, Ben Ali announced that he would not seek re-election when his latest term of office ended in 2014.<sup>147</sup> He also delivered an unprecedented vow to remove censorship of the Internet and traditional media outlets, and to allow the unimpeded formation of opposing political parties.<sup>148</sup> By this point, however, the people of Tunisia were in no mood for promises.<sup>149</sup> Just a few days later, the still-rising tide of revolution forced Ben Ali to surrender his presidency.<sup>150</sup> In Egypt, a similar pattern of events began later that month.<sup>151</sup> After protests exploded in every major Egyptian municipality, Mubarak addressed the nation, promising to loosen restrictions on speech and expression, and guaranteeing other avenues

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144. *Egypt: A Year of Attacks on Free Expression*, HUMAN RIGHTS WATCH, Feb. 11, 2012, <http://www.hrw.org/news/2012/02/11/egypt-year-attacks-free-expression>.

145. *Id.*

146. See Rory McCarthy, *Who is Threatening Free Speech in Post-Revolutionary Tunisia?*, FREE SPEECH DEBATE, Jan. 6, 2014, <http://freespeechdebate.com/en/discuss/who-is-threatening-free-speech-in-post-revolutionary-tunisia/>; Kerim Bouzouita, *Tunisia's Ground Zero for Creative Freedom*, SEISMOPOLITE J. OF ART & POLITICS, October 2012, <http://www.seismopolite.com/tunisia-ground-zero-for-creative-freedom>.

147. Yasmine Ryan, *Tunisia President Not to Run Again*, AL JAZEERA, Jan. 14, 2011, <http://www.aljazeera.com/news/africa/2011/01/2011113192110570350.html>.

148. *Id.* (“Ben Ali promised broader political freedoms, including the formation of a political party and that all censorship of the internet and traditional media would be halted.”).

149. See THE ARAB SPRING, DEMOCRACY AND SECURITY: DOMESTIC AND INTERNATIONAL RAMIFICATIONS 3 (Efraim Inbar, ed., 2013); SOCIAL MOVEMENTS, MOBILIZATION, AND CONTESTATION IN THE MIDDLE EAST AND NORTH AFRICA 241 (Joel Beinin & Frederic Vairel, eds., 2011) (hereinafter SOCIAL MOVEMENTS, MOBILIZATION, AND CONTESTATION).

150. *Zine al-Abidine Ben Ali Forced to Flee Tunisia as Protesters Claim Victory*, THE GUARDIAN, Jan. 14, 2011, <http://www.theguardian.com/world/2011/jan/14/tunisian-president-flees-country-protests>.

151. David D. Kirkpatrick, *Mubarak Orders Crackdown, With Revolt Sweeping Egypt*, N.Y. TIMES (Jan. 28, 2011), <http://www.nytimes.com/2011/01/29/world/middleeast/29unrest.html?pagewanted=all>.

of constitutional reform.<sup>152</sup> As in Tunisia, however, the move was too little, too late. On February 11, Mubarak resigned, and the Egyptian military took charge of the government.<sup>153</sup>

Shortly after these overthrows, calls for greater freedoms in the speech and expression arenas emerged in both Tunisia and Egypt.<sup>154</sup> Among these vows were the remarks of Mohamed Morsi, the man whom the people of Egypt democratically elected as president, and Moncef Marzouki, eventually installed by Tunisia's interim parliament as Ben Ali's eventual successor.<sup>155</sup> Both of these new leaders openly pledged their support to the freedoms of speech and expression, assembly, petition, and the like, stating that achieving stability in their nations began with the recognition of such liberties for all people.<sup>156</sup> Such sentiments echoed the strongly stated positions of many individuals who rallied to the revolutions.<sup>157</sup> Now, the world would watch to see whether the promised broadening of these freedoms would actually occur.

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152. EDGAR THORPE, *THE PEARSON GENERAL KNOWLEDGE MANUAL* 2012 D.41 (2012); Griff Witte, Janine Zacharia & William Branigin, *Mubarak Forces Government to Resign; Obama Urges Him to Deliver on Promises*, WASH. POST (Jan. 28, 2011), <http://www.washingtonpost.com/wp-yn/content/article/2011/01/25/AR2011012500866.html>.

153. David D. Kirkpatrick, *Egypt Erupts in Jubilation as Mubarak Steps Down*, N.Y. TIMES (Feb. 11, 2011), <http://www.nytimes.com/2011/02/12/world/middleeast/12egypt.html>. At the outset, the Egyptian military promised to stand in solidarity with the protestors, understanding and meeting their demands for newfound freedoms. *Id.* However, this proved to be far from the case. *See infra* Part III.E..

154. *See, e.g.*, SONIA L. ALIANAK, *THE TRANSITION TOWARDS REVOLUTION AND REFORM: THE ARAB SPRING REALISED?* 52 (2014); MARWAN BISHARA, *THE INVISIBLE ARAB: THE PROMISE AND PERIL OF THE ARAB REVOLUTIONS* 78 (2013) ("Freedom of expression, freedom from fear, from want, from military intervention, and from war—those were their slogans from the very outset.").

155. *See* Gideon Rose, *A Conversation with Moncef Marzouki*, Council on Foreign Relations, Sept. 28, 2012, <http://www.cfr.org/tunisia/conversation-moncef-marzouki/p35325>; *Egypt's Mohamed Morsi UN General Assembly Speech Transcript 2012*, LATINO POST, Sept. 26, 2012, <http://www.latinospost.com/articles/4611/20120926/egypts-mohammed-morsi-un-general-assembly-speech-mubarak-united-nations-transcript.htm>.

156. *See id.* However, Morsi's commitment to freedom of expression was far more muted than Marzouki's promises in this area. In his United Nations speech soon after his presidential inauguration, Morsi stated that while Egypt strongly supported freedom of expression, this expression did not extend to speech that insulted religions. *See* Paul Richter, *In U.N. Speech, Egypt's Morsi Rejects Broad Free Speech Rights*, L.A. TIMES, Sept. 26, 2012, <http://articles.latimes.com/2012/sep/26/world/la-fg-un-morsi-20120927>

157. *See supra* notes 138–143 and accompanying text.

## II. FIRST OUT: IMMEDIATE POST-REVOLUTIONARY GOVERNMENTAL ABRIDGEMENTS OF FREE SPEECH AND EXPRESSION

### A. *United States*

In 1798, President John Adams signed his name on a bill aimed at restricting speech and expression in the United States.<sup>158</sup> Known as the “Sedition Act,” the new statute turned dissenting political opinions into criminal behavior.<sup>159</sup> Evidence that an individual intended to oppose a government measure became proof enough to earn that individual a conviction.<sup>160</sup> Less than a decade after declaring that “Congress shall make no law abridging” freedom of speech and freedom of the press, the fledgling federal government had enacted a measure accomplishing precisely what the First Amendment purported to prevent.<sup>161</sup>

Multiple motivations inspired this law. Arguably, the dominant factor focused on the young nation’s fear of impending war.<sup>162</sup> In 1794, the United States entered into a controversial treaty with their recent enemy, Great Britain.<sup>163</sup> In return for a series of diplomatic gains and the British agreement to vacate forts in North America’s western territories, the United States promised to grant Great Britain most favored nation trade status and agreed not to interfere in the ongoing war between Britain and France.<sup>164</sup>

Both of these measures angered the government of France.<sup>165</sup> In 1796, the French retaliated by capturing American merchant ships and

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158. Rochelle Raneri Zuck, *Alien and Sedition Acts*, in *THE MAKING OF A MODERN IMMIGRATION: AN ENCYCLOPEDIA OF PEOPLE AND IDEAS* 13 (Patrick J. Hayes, ed., 2012).

159. See Douglas Bradburn, *A Clamor in the Public Mind: Opposition to the Alien and Sedition Acts*, 65 WM. & MARY Q. 565, 565 (July 2008) (describing the Sedition Act as “a new law to criminalize seditious writing, talk, and behavior”).

160. Ch. 74, §2, 1 Stat. 596 (1798).

161. GEOFFREY R. STONE, *PERILOUS TIMES: FREE SPEECH IN WARTIME FROM THE SEDITION ACT OF 1789 TO THE WAR ON TERRORISM* 36 (2004) (“In this act, the Federalists [and the U.S. government] declared war on dissent.”).

162. JAMES ROGERS SHARP, *AMERICAN POLITICS IN THE EARLY REPUBLIC: THE NEW NATION IN CRISIS* 163 (1995).

163. TODD ESTES, *THE JAY TREATY DEBATE, PUBLIC OPINION, AND THE EVOLUTION OF EARLY AMERICAN POLITICAL CULTURE* 104 (2006).

164. See generally *Jay Treaty*, THE LEHRMAN INST., <http://lehrmaninstitute.org/history/jay-treaty.asp>.

165. THE SUPREME COURT: CONTROVERSIES, CASES, AND CHARACTERS FROM JOHN JAY TO JOHN ROBERTS 114 (Paul Finkleman, ed., 2014) (hereinafter “THE SUPREME COURT”) (“For the French, the ratification of Jay’s Treaty was a slap in the face. After all, many Frenchmen believed that the United States owed its very existence to French help.”).

seizing their cargo.<sup>166</sup> Quickly, Adams ordered three American diplomats to meet with the French Foreign Minister, the Marquis de Talleyrand, and negotiate an agreement that ended this practice.<sup>167</sup> When the envoys arrived on French soil, however, they received word from Talleyrand's intermediaries that the French would stop seizing American ships only if the United States provided France a low-interest loan, paid American merchant claims against France, and provided Talleyrand with a bribe of fifty thousand pounds.<sup>168</sup>

The American diplomats flatly rejected this proposal.<sup>169</sup> After this refusal, and the refutation of a second similar French offer, Talleyrand threatened to invade the United States.<sup>170</sup> When diplomatic dispatches describing this threat arrived in Washington, Adams began preparing the nation for war with France.<sup>171</sup> Rumors about the likelihood of hostilities ran rampant, with "public pronouncements couched in extreme terms" igniting sentiments about how the United States should deal with the alleged menace overseas.<sup>172</sup> Jonathan Dayton, the Speaker of the House of Representatives, went as far as announcing that a vast military force had gathered in France, preparing to launch an offensive on United States soil—a claim that was completely false.<sup>173</sup>

Against this combustible backdrop, the United States Congress passed four related laws during a one-month period in 1798.<sup>174</sup> Three of these statutes focused on foreigners coming to the United States, increasing the term of residency required to attain American

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166. MATTHEW Q. DAWSON, PARTISANSHIP AND THE BIRTH OF AMERICA'S SECOND PARTY, 1796-1800 52 (2000).

167. Gregg Costa, *John Marshall, The Sedition Act, and Free Speech in the Early Republic*, 77 TEX. L. REV. 1011, 1021-23 (1999).

168. *Id.* at 1022.

169. *Id.* In response to the requested bribe for Talleyrand, American diplomat Charles Pinckney responded, "No, no; not a sixpence." STONE, *supra* note 161, at 22.

170. ANDREW P. NAPOLITANO, SUICIDE PACT: THE RADICAL EXPANSION OF PRESIDENTIAL POWERS AND THE ASSAULT ON CIVIL LIBERTIES 32 (2014).

171. *See id.* at 32-33; STONE, *supra* note 161, at 22-25

172. *See, e.g.*, ENCYCLOPEDIA OF THE WARS OF THE EARLY AMERICAN REPUBLIC, 1783-1812 554 (Spencer C. Tucker, ed., 2014); RICHARD J. ELLIS, THE DEVELOPMENT OF THE AMERICAN PRESIDENCY 203 (2013); GORDON S. WOOD, EMPIRE OF LIBERTY: A HISTORY OF THE EARLY REPUBLIC, 1789-1815 240-47 (2009); ARTHUR J. SABIN, IN CALMER TIMES: THE SUPREME COURT AND RED MONDAY 14 (1999); ANDREW SANTELLA, JOHN ADAMS 29-30 (2002); ALEXANDER DECONDE, THE QUASI WAR: THE POLITICS AND DIPLOMACY OF THE UNDECLARED WAR WITH FRANCE 82-84 (1966); Geoffrey R. Stone, *Civil Liberties in Wartime*, 28 J. SUP. CT. HIST. 215, 215-17 (2003) (hereinafter Stone, *Civil Liberties in Wartime*).

173. WOOD, *supra* note 172, at 245.

174. *See generally* Zuck, *supra* note 158.

citizenship and empowering the President of the United States to arrest any foreigner who was a citizen of an enemy nation and deport any alien deemed “dangerous to the peace and safety of the United States” during peacetime.<sup>175</sup> The fourth law in this group was the Sedition Act, declaring that any expression aimed at “opposing or resisting any law of the United States, or any act of the President of the United States,” and publishing “any false, scandalous, and malicious writing” criticizing the American government were high misdemeanor offenses.<sup>176</sup> Anyone found guilty of expressing their views about the United States government in these prohibited manners could receive steep fines or prison sentences.<sup>177</sup>

The four Alien and Sedition Acts passed despite stiff opposition.<sup>178</sup> Representative Edward Livingston specifically denounced the Sedition Act as a reactionary, fear-driven reduction of fundamental liberties.<sup>179</sup> “No evidence [of American citizens attempting to undermine the federal government and side with France], then, being produced, we have a right to say that none exists, and yet we are about to sanction a most important act, and on what ground?” he demanded of his fellow legislators in one oration. “Our individual suspicions, our private fears, our overheated imaginations.”<sup>180</sup> Others joined him in these objections.<sup>181</sup>

Even Adams himself questioned these measures, particularly the Sedition Act, although he did not openly oppose them.<sup>182</sup> Yet anti-French feelings had reached a zenith, and the majority of the people did not want to hear their president talk about diplomacy with the

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175. See Marshall Smelser, *George Washington and the Alien and Sedition Acts*, 59 AM. HIST. REV. 322, 322 (1954); STONE, *supra* note 161, at 33.

176. Ch. 74, §1, §2, 1 Stat. 596 (1798).

177. Ch. 74, §2, §3, 1 Stat. 596 (1798).

178. See, e.g., Bradburn, *supra* note 159, at 565.

179. See RONALD H. BAYOR, *THE COLUMBIA DOCUMENTARY HISTORY OF RACE AND ETHNICITY IN AMERICA 177–79* (2004).

180. *Id.* at 178.

181. For instance, Albert Gallatin declared:

This [Sedition Bill] and its supporters suppose that whoever dislikes the measures of the Administration and of a temporary majority in [C]ongress, and shall, either by speaking or writing, expresses his disapprobation and his want of confidence in men now in power, is seditious, is an enemy, not of Administration, but of the Constitution, and is liable to punishment.

JAMES ROGERS SHARP, *AMERICAN POLITICS IN THE EARLY REPUBLIC: THE NEW NATION IN CRISIS* 163 (1995); see also WOOD, *supra* note 172, at 245.

182. See Laura Long, *An Analysis of Congressional Arguments Limiting Free Speech*, 52 COMMUNICATION L. REV. 52 (2013).

“enemy.”<sup>183</sup> Fearing that the American people would revolt against the government, he signed the bills into law, rationalizing them as “war measures” to ensure the citizenry’s safety.<sup>184</sup>

Yet another plausible explanation existed for the passage of these laws. Adams was a member of the Federalist Party, the dominant political party in Congress and on the United States Supreme Court at that time.<sup>185</sup> Thomas Jefferson, the Vice-President, belonged to the Democratic-Republican Party, which formed a significant minority in Congress.<sup>186</sup> The parties had engaged in an increasingly hostile relationship with one another.<sup>187</sup> Since the Federalists generally believed that immigrants would typically vote with the Democratic-Republicans, the three laws limiting the influence of aliens benefited Federalist interests.<sup>188</sup> Likewise, the power implicit within the Sedition Act could allow the Federalist majority to censure Democratic-Republican newspapers and speechmakers, thus controlling the messages that the public heard leading up to the elections of 1800.<sup>189</sup>

The first arrest under the Sedition Act came on July 17, 1798, shortly after the law’s passage.<sup>190</sup> William Durrell, editor of a Democratic-Republican newspaper in upstate New York, was indicted for publishing “false scandalous malicious and [defamatory] Libel of and concerning John Adams” and later convicted of seditious libel.<sup>191</sup> Not long afterward, Benjamin Franklin Bache, editor of the *Philadelphia Aurora* and the grandson of Benjamin Franklin, became a target of Federalist “committees of surveillance.”<sup>192</sup> Eventually, they

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183. See Stone, *Civil Liberties in Wartime*, *supra* note 172, at 217.

184. See DAVID McCULLOUGH, JOHN ADAMS 505–06 (2008). In addition, Adams adopted the Blackstone-esque approach that the Sedition Act was acceptable because it did not involve a prior restraint on speech. RICHARD L. WILSON, AMERICAN POLITICAL LEADERS 7 (2002).

185. See Michael T. Gibson, *The Supreme Court and Freedom of Expression from 1791 to 1917*, 55 FORDHAM L. REV. 263, 274 (1986).

186. Craig R. Smith, *The Aliens are Coming: John Adams and the Federalist Attack on the First Amendment*, CTR. FOR FIRST AMENDMENT STUDIES, <http://www.firstamendmentstudies.org/wp/alien.html>.

187. See David Jenkins, *The Sedition Act of 1798 and the Incorporation of Seditious Libel into First Amendment Jurisprudence*, 45 AM. J. LEGAL HIST. 154, 159 (2001).

188. Smith, *supra* note 186; Stone, *Civil Liberties in Wartime*, *supra* note 172, at 217.

189. See Gibson, *supra* note 185, at 273. In the words of Professor Geoffrey Stone: “Suppressing speech because it is dangerous to the national interest is one thing; suppressing it because it threatens a partisan interest is something else entirely. As the events of 1798 demonstrate, it is often difficult to tell the difference.” STONE, *supra* note 161, at 75.

190. RICHARD N. ROSENFELD, AMERICAN AURORA: A DEMOCRATIC-REPUBLICAN RETURNS 690 (2014).

191. *Id.*

192. *Id.*; see also Ronald K. L. Collins, *Benjamin Bache and the Fight for a Free Press*,

found what they wanted to uncover, leading to Bache's arrest for "libelling the President and Executive Government, in a manner tending to excite sedition, and opposition to the laws, by sundry publications and republications."<sup>193</sup> Only Bache's death from yellow fever prevented him from being forced to defend himself from this accusation at a criminal trial.<sup>194</sup>

By the time the Sedition Act expired on March 3, 1801, a reported twenty-five Americans had been arrested for seditious conduct.<sup>195</sup> Fourteen individuals had been indicted on criminal charges under this law.<sup>196</sup> Ten of the indictments led to a criminal trial, all of them ending in convictions.<sup>197</sup> The forms of the purported "sedition" ranged from a Massachusetts man putting up a liberty pole calling for "downfall to the Tyrants of America" to a New Jersey man shouting out a drunken comment against Adams's administration.<sup>198</sup>

Still, from a free speech perspective, a silver lining eventually emerged from this situation. With every arrest under the Sedition Act, the public opposition to the Federalists grew, especially as the anticipated war with France never materialized.<sup>199</sup> People grew disenchanted with the notion of the one party maintaining control of all three federal government branches, recognizing that the lack of opposition in power made it too easy for the political leaders to ignore the individual rights of citizens.<sup>200</sup> In sum, the fervor of nationalism

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FIRST AMENDMENT CTR., July 14, 2008, <http://www.firstamendmentcenter.org/benjamin-bache-the-fight-for-a-free-press>; Gordon T. Belt, *The Sedition Act of 1798*, FIRST AMENDMENT CTR., at 2, [http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/Sedition\\_Act\\_cases.pdf](http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/Sedition_Act_cases.pdf).

193. ROSENFELD, *supra* note 190, at 169.

194. Belt, *supra* note 192, at 2.

195. WOOD, *supra* note 172, at 260.

196. *Id.*

197. *Id.* This included prosecutions of four of the five most influential Republican journalistic publications. STONE, *supra* note 161, at 48, 63; Stone *Civil Liberties in Wartime*, *supra* note 172, at 217 ("[T]he Sedition Act was vigorously enforced, but only against supporters of the Republican party.").

198. See SIMON P. NEWMAN, *PARADES AND THE POLITICS OF THE STREET: FESTIVE CULTURE IN THE EARLY AMERICAN REPUBLIC 176* (2010); Bradburn, *supra* note 159, at 578

199. See, e.g., FRANK N. MAGILL, *THE 17TH AND 18TH CENTURIES: DICTIONARY OF WORLD BIOGRAPHY*, VOL. IV 19 (2013); Jeffrey L. Pasley, *Alien and Sedition Acts*, in *CONSPIRACY THEORIES IN AMERICAN HISTORY: AN ENCYCLOPEDIA 54* (Peter Knight, ed., 2003); Gary D. Rowe, *The Sound of Silence: United States v. Hudson & Goodwin, The Jeffersonian Ascendancy, and the Abolition of Federal Common Law Crimes*, 101 YALE L.J. 919, 939–41 (1992).

200. See JAMES REICHLEY, *THE LIFE OF THE PARTIES: A HISTORY OF AMERICAN POLITICAL PARTIES 46–47* (2000); William T. Mayton, *Seditious Libel and the Lost Guarantee of a Freedom of Expression*, 84 COLUM. L. REV. 91, 123–24 (1984) ("This act could have hardly

and fears about safety from harm that swept the country at the outset of the “quasi-war” with France dissolved relatively quickly, replaced by what seemed to be a renewed interest in preserving personal liberties.<sup>201</sup>

Reading these tea leaves of public opinion, Jefferson and the Democratic-Republicans made governmental respect for freedom of expression and other civil liberties a central plank in their campaigns for the elections in 1800.<sup>202</sup> After a bitterly contested fight for the White House, Jefferson emerged victorious, and the Democratic-Republicans succeeded in winning a majority of congressional seats as well.<sup>203</sup> When the Sedition Act expired, Congress refused to renew it.<sup>204</sup> Jefferson pardoned individuals who were convicted under that law, and ceased virtually all pending Sedition Act prosecutions.<sup>205</sup> The House of Representatives even went as far as impeaching Justice Samuel Chase, a Federalist who had advocated for the Sedition Act’s passage and used it zealously from the bench.<sup>206</sup>

Of course, just as the Sedition Act’s passage owed much to the Federalist Party’s political strategies, the subsequent hasty recoil from this law’s restrictions almost certainly arose from the Democratic-Republican Party’s efforts to curry favor from voters.<sup>207</sup> Still, the fact remains that despite their stark immediate post-revolutionary retreat away from defending free speech and expression, the United States succeeded in reversing course surprisingly quickly.<sup>208</sup> This shift created

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been a starker instance of self-serving politics . . . [U]ndoubtedly, this Federalist talk of internal enemies was not more than poor camouflage for a measure favoring incumbency.”); MAGILL, *supra* note 199, at 19.

201. See STONE, *supra* note 161, at 71 (“The net effect of the act had been to ‘stir up a nest of hornets.’”).

202. See e.g., SUSAN DUNN, *JEFFERSON’S SECOND REVOLUTION: THE ELECTION OF 1800 AND THE TRIUMPH OF REPUBLICANISM* 145 (2004).

203. SMITH, *supra* note 186. In addition to Jefferson’s presidential victory, the Democratic-Republicans came away controlling 103 seats in the House of Representatives and twenty-five seats in the Senate, compared to just thirty-nine Federalist seats in the House and nine seats in the Senate. *Id.* at n.40.

204. Gibson, *supra* note 185, at 275.

205. *Id.*

206. *Id.*; BAILEY STONE, *THE ANATOMY OF REVOLUTION REVISITED: A COMPARATIVE ANALYSIS OF ENGLAND, FRANCE AND RUSSIA* 200, 209, 221 (2013).

207. See e.g., John Lauritz Larson, *Jefferson’s Union and the Problem of Internal Improvements*, in *JEFFERSONIAN LEGACIES* 353 (Peter S. Onuf ed., 1993); DUNN, *supra* note 202, at 145.

208. See *supra* notes 199–207 and accompanying text; see also Burt Neuborne, *The Role of Courts in Time of War*, 29 N.Y.U. REV. L. & SOC. CHANGE 555, 570 (2005) (“The Alien and Sedition Acts were repudiated at the polls in the election of 1800.”).

a considerably stronger climate of preserving these freedoms that remained largely unblemished in the United States until at least the American Civil War, an atmosphere that continues to be a significant presence in American political debates today.<sup>209</sup>

### *B. France*

Despite the ferocious nationwide violence that erupted after the storming of the Bastille, the French monarchy remained in power after the initial struggles of the French Revolution.<sup>210</sup> Overall, the revolutionaries seemed to accept the new National Assembly, along with the Declaration of the Rights of Man and of the Citizen, as signals that the government would meet their demands.<sup>211</sup> Yet the revolutionary leaders also desired a written constitution, a single document that clearly articulated the rights of French citizens.<sup>212</sup> Indeed, a Constitutional Committee with representatives from the three estates had existed in various forms since the day that the Bastille fell to the people.<sup>213</sup>

By the autumn of 1791, this Committee had approved a written constitution that would govern the post-revolutionary nation.<sup>214</sup> Reluctantly, King Louis XVI agreed to recognize it and abide by its terms, drastically reducing the monarch's authority over the French people.<sup>215</sup> The drafters incorporated the Declaration of the Rights of Man and of the Citizen into the preamble of the document, reaffirming the revolutionary fervor for guaranteeing freedom of speech and

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209. See, e.g., Gibson, *supra* note 185, at 271–72, 276; STONE, *supra* note 161, at 73–76. The issues that the Sedition Act raised throughout the young United States remain a fertile source for discussion and debate in the twenty-first century United States, particularly after the federal measures that followed the terrorist attacks of September 11, 2001. For a sampling of some recent works on the same basic issues that surrounded the Sedition Act debates, see generally, SUSAN N. HERMAN, TAKING LIBERTIES: THE WAR ON TERROR AND THE EROSION OF AMERICAN DEMOCRACY (2011); RODNEY A. SMOLLA, FREE SPEECH IN AN OPEN SOCIETY (2011); OWEN FISS, THE IRONY OF FREE SPEECH (2009); DAVID COLE & JAMES X. DEMPSEY, TERRORISM AND THE CONSTITUTION (2006).

210. ENCYCLOPEDIA OF POLITICAL REVOLUTIONS, *supra* note 52, at 65–67, 276.

211. See *supra* Part I.B.

212. See ENCYCLOPEDIA OF POLITICAL REVOLUTIONS, *supra* note 52, at 156.

213. See generally MICHAEL P. FITZSIMMONS, THE REMAKING OF FRANCE: THE NATIONAL ASSEMBLY AND THE CONSTITUTION OF 1791 50 (2002).

214. ENCYCLOPEDIA OF POLITICAL REVOLUTIONS, *supra* note 52, at 156–58. This marked the first written constitution ever to govern France. See HANDBOOK OF THE FRENCH REVOLUTION, *supra* note 51, at 212.

215. MARGARET R. O'LEARY, FORGING FREEDOM: THE LIFE OF CERF BERR OF MEDELSHEIM 318–20 (2012).

expression, petition, assembly, and other individual liberties.<sup>216</sup> Separation of powers among the National Assembly, the king and his court, and the judiciary formed the backbone of the new governmental plan.<sup>217</sup> The old feudal system and the ancient traditions of the monarchy had little place within this constitution's framework.<sup>218</sup>

Still, the document contained some surprises. The constitution drew a division between "active citizens"—the nation's more affluent property-holders—and the financially poorer "passive citizens."<sup>219</sup> All women in France were classified as "passive citizens."<sup>220</sup> Only individuals whose tax payments surpassed a certain threshold were permitted to vote in elections.<sup>221</sup> These restrictions hearkened back to some of the old regime's policies, angering revolutionaries who wanted the freedoms on the Declaration of the Rights of Man and of the Citizen to apply to all people, regardless of their financial wealth.<sup>222</sup>

Complicating matters further, France engaged in a war against Austria in the spring of 1792.<sup>223</sup> Amid this chaos, new political factions formed and sought to achieve popularity among the people.<sup>224</sup> Finding the greatest success was the Jacobin Club, the most radical and egalitarian-minded political organization in France at that time.<sup>225</sup> Any club member who ever spoke against any principle of the Declaration

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216. ENCYCLOPEDIA OF POLITICAL REVOLUTIONS, *supra* note 52, at 156.

217. See Mary Denis O'Grady, Master's Thesis, *The Theory of Separation of Powers as Expressed in the French Constitution of 1791*, Paper 795 (1948), [http://ecommons.luc.edu/cgi/viewcontent.cgi?article=1797&context=luc\\_theses](http://ecommons.luc.edu/cgi/viewcontent.cgi?article=1797&context=luc_theses); see also Louis Henkin, *Revolutions and Constitutions*, 49 LA. L. REV. 1023, 1025 (1989) (quoting the Declaration: "'any society in which rights are not guaranteed, or in which the separation of powers is not defined, has no constitution[.]'" ("French Declaration of the Rights of Man and of the Citizen, art. 16.")).

218. However, the new constitution did define the king as a representative of the nation, even though the king was never elected by the people and thus had no direct legitimacy to the citizenry. HOWARD G. BROWN, *WAR, REVOLUTION, AND THE BUREAUCRATIC STATE: POLITICS AND ARMY ADMINISTRATION IN FRANCE, 1791-1799* 16 (1995).

219. JAMES R. LEHNING, *TO BE A CITIZEN: THE POLITICAL CULTURE OF THE EARLY FRENCH THIRD REPUBLIC* 23 (2001); Giovanna Procacci, *Poor Citizens: Social Citizenship Versus Individualization of Welfare*, in *CITIZENSHIP, MARKETS, AND THE STATE* 52 (Colin Crouch et al. eds., 2001).

220. MIM KELBER, *WOMEN AND GOVERNMENT: NEW WAYS TO POLITICAL POWER* (1994).

221. ENCYCLOPEDIA OF POLITICAL REVOLUTIONS, *supra* note 52, at 158.

222. See, e.g., C. J. MITCHELL, *THE FRENCH LEGISLATIVE ASSEMBLY OF 1791* 111 (1988).

223. CHARLES ESDAILE, *THE FRENCH WARS 1792-1815* 4 (2002).

224. See generally Alison Patrick, *Political Divisions in the French National Convention, 1792-93*, 41 J. MODERN HIST. 421-74 (1969) (describing the increasingly strident breaks among emerging political factions during this time period in France).

225. For a good summary of the Jacobin Club and its influence over the French citizenry, see ENCYCLOPEDIA OF POLITICAL REVOLUTIONS, *supra* note 52, at 361-66.

of the Rights of Man and of the Citizen was instantly expelled from the organization.<sup>226</sup> Ironically, the group that spoke so highly about equal rights and freedoms for all routinely persecuted its own members for speech and expression that did not advance the Jacobin Club's gains.<sup>227</sup>

In August 1792, the revolutionaries arrested Louis XVI and his queen, Marie Antoinette.<sup>228</sup> In September, the National Convention (which replaced the National Assembly as France's new legislative organ) voted to abolish the monarchy entirely, proclaiming "the new France" to be a republic.<sup>229</sup> Four months after that, Louis XVI was tried by the National Convention for treason and condemned to death.<sup>230</sup> That autumn, Queen Marie Antoinette died on the guillotine as well.<sup>231</sup>

The removal of the monarchy created a power vacuum atop the French government's food chain.<sup>232</sup> To avoid total bedlam, the National Convention established a twelve-member Committee of Public Safety, placing almost total control in their hands.<sup>233</sup> At first, the Committee seemed to focus on preserving and enlarging the rights of the French citizenry, drafting a new written constitution that incorporated and enlarged the Declaration of the Rights of Man and of the Citizen in June 1793. Leaders of the National Convention insisted that the people themselves would retain the right to vote for or against

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226. *Id.* at 363–64.

227. PATRICE L. R. HIGONNET, *GOODNESS BEYOND VIRTUE, JACOBINS DURING THE FRENCH REVOLUTION* 70 (1998).

228. CONNOLLY, *supra* note 43, at 30.

229. A COMPANION TO THE FRENCH REVOLUTION, *supra* note 43, at 447–48. The National Convention emerged during the upheaval of August 1792 with three stated purposes: temporarily governing France, deciding the fate of Louis XVI and Marie Antoinette, and drafting a new constitution in which a bona fide republic would replace the constitutional monarchy that existed under the current constitutional structure. *Id.* at 448.

230. Joel Felix, *Monarchy*, in *HANDBOOK OF THE FRENCH REVOLUTION*, *supra* note 51, at 56.

231. CONNOLLY, *supra* note 43, at 38. Many French citizens, however, were displeased by the executions of the king and queen, arguing that the revolutionary leaders should have reached a more moderate solution while still ensuring freedom for the people. *See, e.g.*, WALTON, *supra* note 45, at 130.

232. Under the Constitution of 1791, the king served as the center of the government's executive branch. *See* BROWN, *supra* note 218, at 16. With the king gone and the monarchy abolished completely, the center of power in the French government was abruptly vacant, with no immediate legal plan of succession in place.

233. *See generally* R.R. PALMER, *TWELVE WHO RULED: THE COMMITTEE OF PUBLIC SAFETY DURING THE TERROR* (1941) (describing the creation of the Committee of Public Safety and its rapid ascent to a position of absolute power in France).

this proposed plan of government, giving the people a level of power that they had not held in the formation of the previous constitution.<sup>234</sup> Political participation among the populace swelled to unprecedented levels, with an overwhelming majority of citizens voting in favor of enacting the Constitution of 1793.<sup>235</sup>

Just a few months later, however, the Committee of Public Safety declared that the new constitution would be suspended indefinitely, as France was still in an emergency situation of revolution.<sup>236</sup> Leading the Committee at the time of this decision was Maximilien Robespierre, one of the staunchest radicals of the Jacobin Club.<sup>237</sup> A devoted reader of Rousseau's philosophical treatises, Robespierre was a lawyer who joined the revolutionary effort as a man who sympathized with the poor and opposed the death penalty.<sup>238</sup> He became president of the Jacobin faction in 1790, serving as a drafter of the Declaration of the Rights of Man and of the Citizen.<sup>239</sup> Evidently, he also reversed his stance on the death penalty, vigorously speaking out in favor of Louis XVI's execution.<sup>240</sup>

With Robespierre and the Committee of Public Safety in charge, freedom of expression became virtually non-existent in France.<sup>241</sup> Without strictly limiting speech and expression to prevent subversive or immoral commentary, Robespierre believed that the French government could never again maintain any semblance of authority over the general public.<sup>242</sup> The people were desperate, he argued, leaving no choice but to use desperate measures to gain control.<sup>243</sup>

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234. *See id.*

235. *Id.*

236. *Id.* ("The government of the Republic will be revolutionary until the peace."); *see also* MICHAEL L. KENNEDY, *THE JACOBIN CLUBS IN THE FRENCH REVOLUTION, 1793-1795* 53 (2000).

237. *See* KENNEDY, *supra* note 236, at 54.

238. PALMER, *supra* note 233, at 6-7.

239. *Maximilien Robespierre: 1758-1794*, BBC, [http://www.bbc.co.uk/history/historic\\_figures/robespierre\\_maximilien.shtml](http://www.bbc.co.uk/history/historic_figures/robespierre_maximilien.shtml) (last visited March 26, 2016).

240. *Id.*

241. *See, e.g.*, WALTON, *supra* note 45, at 129.

242. *See, e.g.*, LYNN AVERY HUNT, *POLITICS, CULTURE AND CLASS IN THE FRENCH REVOLUTION* 46 (1984) ("The Terror was an emanation of virtue for Robespierre and the other radicals, because it was required for the security of the new republic.")

243. *Id.* This seemed to be a tremendous ideological reversal for Robespierre, who had declared his devotion to governance by the popular will during discussions regarding the Constitution of 1793, requesting a meeting place large enough to hold twelve thousand spectators to ensure that "the general will, the voice of reason, and the public interest [would] be heard." *Id.* at 85.

Seizing upon the fact that France historically recognized a crime of calumny, or injurious speech, Robespierre oversaw enactment and enforcement of new statutes punishing individuals for forms of speech and expression that the Committee considered “treachery.”<sup>244</sup> Perhaps the most restrictive of all of them was The Law of Suspects, which imposed penalties upon any people who, “by their conduct or their relationships, by their conversation or by their writing, [were] shown to be partisans of tyranny and federalism and the enemies of freedom.”<sup>245</sup>

Between 1793 and 1794, tens of thousands of French citizens were executed on the guillotine or died in prison for their allegedly disloyal remarks, writings, or other expressions and actions, judged with impunity by the Committee of Public Safety.<sup>246</sup> Today, historians refer to this gruesome period as the Reign of Terror.<sup>247</sup> Interestingly, though, Robespierre was not completely callous about what he and his followers were doing.<sup>248</sup> At least once, he even said that post-revolutionary leaders should try to extend rights of free expression rather than chilling this freedom.<sup>249</sup> Yet he viewed the use of terror against people believed to harbour anti-government sentiments as grisly means of accomplishing a virtuous end.<sup>250</sup> “It has been said that terror is the principle of despotic government,” he told the National Convention. “Does your government therefore resemble despotism? Yes, as the sword that gleams in the hands of the heroes of liberty resembles that with which the henchmen of tyranny are armed.”<sup>251</sup> According to his professed beliefs, being a heavy-handed censor, inquisitor, and punisher now would ultimately lead to the forging a far

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244. WALTON, *supra* note 45, at 133.

245. IAN DONNACHIE & CARMEN LAVIN, FROM ENLIGHTENMENT TO ROMANTICISM, ANTHOLOGY I 93 (2003); WALTON, *supra* note 45, at 133–34.

246. RICHARD BULLIET ET AL., THE EARTH AND ITS PEOPLES: A GLOBAL HISTORY 491 (5th ed. 2011) [hereinafter THE EARTH AND ITS PEOPLES]. For an account of the Committee’s secret meetings during which many of these judgments were rendered, as well as the power that these twelve Committee members wielded over France at this time, see PALMER, *supra* note 233, at 4–6.

247. RICHARD BULLIET ET AL., *supra* note 246, at 491.

248. See DONNACHIE & LAVIN, *supra* note 245, at 98; see e.g., WALTON, *supra* note 45, at 135.

249. WALTON, *supra* note 45, at 135 (“As Robespierre admitted in May 1791, revolutions were not ideal moments for extending free speech, for too many people harbored grudges for the calumnies spread by the free press. (He believed nonetheless that it was important to try).”).

250. See, e.g., HUNT, *supra* note 242, at 46.

251. CONNOLLY, *supra* note 43, at 39.

more stable society.<sup>252</sup>

In the end, the man who ordered so many executions on the basis of mere suspicions ultimately found himself at the receiving end of such treatment.<sup>253</sup> After living the last year of his life wrapped in paranoia, rarely even leaving his house, was arrested and executed by guillotine in the summer of 1794.<sup>254</sup>

Still, the effects of the Reign of Terror on the population lingered.<sup>255</sup> Within a five-year period, France had changed from a revolutionary society that seemed committed to permitting freedom of expression and other individual right to a land of suppression, suspicion, violence, and fear.<sup>256</sup> It would take some time for this deeply rooted atmosphere to begin shifting to the far more favorable free expression climate that exists in France in the present day.<sup>257</sup>

### C. Russia

When Czar Nicholas II issued the October Manifesto, much of the Russian population erupted in celebration.<sup>258</sup> Their revolutionary movement had not succeeded in toppling the existing regime, but many of the individuals calling for change at that time were looking for systemic reform, not full removal of the czar.<sup>259</sup> Achieving the

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252. *See id.* (“Subdue by terror the enemies of liberty, and you will be right, as founders of the Republic.”). This viewpoint, however, was not necessarily uniform within the individuals in political power at this time, or even within the Jacobins themselves.

253. *Maximilien Robespierre*, *supra* note 239.

254. *See* PALMER, *supra* note 233, at 367, 381.

255. Contrary to what many people asserted at the time, Robespierre’s execution did not by itself end the Reign of Terror and the laws of censorship and persecution that developed during that time. The movement away from that short but traumatic period in French history took considerably longer. *See* Laura Mason, *Thermidor and the Myth of Rapture*, in *HANDBOOK OF THE FRENCH REVOLUTION*, *supra* note 51, at 521–33.

256. For a review of this transformation, *compare supra* Part I .B, *with supra* Part II.B. *See also* Stephen Clay, *The White Terror: Factions, Reactions, and the Politics of Vengeance*, in *A COMPANION TO THE FRENCH REVOLUTION*, *supra* note 43, at 359–74 (discussing the various reactions, including a backlash of violence by a segment of the population against individuals associated with Robespierre and the Committee, in the aftermath of Robespierre’s demise).

257. Recently, questions about freedom of speech in France arose following the Charlie Hedbo attacks in Paris. *See, e.g.*, Paul Kirby, *Paris Attacks: France Grapples with Freedom of Speech*, BBC (Jan. 15, 2015), <http://www.bbc.com/news/blogs-eu-30829005>; Jonathan Turley, *The Biggest Threat to French Free Speech Isn’t Terrorism. It’s The Government*, WASH. POST (Jan. 8, 2015), [http://www.washingtonpost.com/opinions/what-it-means-to-stand-with-charlie-hebdo/2015/01/08/ab416214-96e8-11e4-aabd-d0b93ff613d5\\_story.html](http://www.washingtonpost.com/opinions/what-it-means-to-stand-with-charlie-hebdo/2015/01/08/ab416214-96e8-11e4-aabd-d0b93ff613d5_story.html).

258. *See supra* Part I.C.

259. Even the petition that the workers attempted to present to the czar on Bloody Sunday never asked for the czar to abdicate the throne. Instead, it called only for the czar to allow

promises within the October Manifesto appeared to encapsulate enough victories to satisfy them.<sup>260</sup> To these revelers, this day represented a pivot point in their lives, the moment when they began to gain some bona fide control over their social, economic, and political destinies.<sup>261</sup>

Yet some people remained skeptical about the prospects for change. “Does [the czar] promise [any reforms] of his own good will? Or with a pure heart?” asked Marxist theorist Leon Trotsky rhetorically during an address in 1905. Later in his speech, Trotsky answered his own question: “It is this tireless hangman on the throne whom we have forced to promise us freedom.”<sup>262</sup>

Ultimately, the fears of Trotsky and the other skeptics proved to be justified. Despite his myriad of promises to improve civil liberties and economic opportunities for the citizenry, Nicholas II quickly felt “sick with shame at this betrayal of the dynasty.”<sup>263</sup> It soon became apparent that the czar had no desire to relinquish his autocratic rule and grant more freedoms to the people. Even on the day of the October Manifesto’s publication, the celebratory mood was tempered in many communities where police officers violently shut down peaceful meetings and protests.<sup>264</sup> During the next three days, 690 documented instances of government-sponsored violence against Russian subjects occurred in 660 towns and villages across the empire.<sup>265</sup>

Many Russian revolutionaries believed that the greatest opportunity for reform came from the Duma, the popularly elected legislature that Nicholas II promised in the October Manifesto.<sup>266</sup> Installing people who would represent the average citizen’s interests

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greater freedoms for his subjects. *Petition Prepared for Presentation to Nicholas II, January 9, 1905*, *supra* note 75.

260. HOSKING, *supra* note 91, at 29; PIPES, *supra* note 70, at 45.

261. See, e.g., STEVE PHILLIPS, *LENIN AND THE RUSSIAN REVOLUTION 10–11* (2000); FITZPATRICK, *supra* note 70, at 33–34.

262. GERALD SURH, 1905 IN ST. PETERSBURG: LABOR, SOCIETY, AND REVOLUTION 338 (1989).

263. *Pyotr Stolypin—A Summary*, HISTORY IN AN HOUR (Sept. 18, 2013), <http://www.historyinanehour.com/2013/09/18/pyotr-stolypin-summary>. See also PIPES, *supra* note 70, at 44 (“Before retiring [on the day when he signed the October Manifesto], Nicholas wrote in his diary: ‘After such a day, the head has grown heavy and thoughts have become confused. May the Lord help us save and pacify Russia.’”).

264. Viktoriya Khiterer, *The October 1905 Pogrom in Kiev*, 22 E. EUROPEAN JEWISH AFFAIRS 21, 21 (1992).

265. *Id.*

266. See, e.g., ASCHER, *supra* note 81, at 36.

in this legislative body instilled hope of actually realizing the czar's October Manifesto pledges of free speech, assembly, and multiple other individual liberties.<sup>267</sup> When elections for seats in the Duma occurred without any notable government interference, this widespread level of anticipation rose even higher.<sup>268</sup>

Before the Duma actually convened, however, Nicholas II promulgated the Fundamental Laws of Russia, a document that would serve as Russia's new constitution.<sup>269</sup> At first glance, the Fundamental Laws appeared to be largely the same as the October Manifesto. It contained strong language guaranteeing freedom of speech and renouncing past practices of state-ordered censorship.<sup>270</sup> It legalized political parties and trade unions, entities that received no legal protection from the Russian government before 1905.<sup>271</sup> It recognized freedom of association and freedom of conscience for all Russian citizens.<sup>272</sup>

Closer examination, however, revealed important contrasts between the October Manifesto and the Fundamental Laws. For instance, the Fundamental Laws granted the czar power to dissolve the Duma at any time, leaving the popularly elected legislature living in fear of the czar's actions.<sup>273</sup> No bill could become a law without the czar's approving signature.<sup>274</sup> During periods when the Duma was not in session, the czar had complete decision-making authority for Russia.<sup>275</sup> The power to declare war or enter into a peace agreement rested unilaterally with the czar.<sup>276</sup> Overall, the message was blunt. Russia had a popularly elected legislature now, but the czar was still

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267. *See id.* For a brief period after signing the October Manifesto, Czar Nicholas II and his advisors even permitted the Russian people an unprecedented degree of freedom, including a vast increase of liberty of speech and expression. *Id.* at 40.

268. The new electoral system excluded many Russians from voting, including women and domestic servants. HOSKING, *supra* note 91, at 427. However, two heavily populated social classes in Russia—peasants and factory workers—were now permitted to vote. *Id.*

269. JENNIFER SIEGEL, FOR PEACE AND MONEY: FRENCH AND BRITISH FINANCE IN THE SERVICE OF TSARS AND COMMISSARS 89 (2014).

270. *See* PROSPECTS FOR CONSTITUTIONALISM IN POST-COMMUNIST COUNTRIES 70 (Levent Gönenç ed., 2002).

271. *Id.*; FITZPATRICK, *supra* note 70, at 35.

272. PROSPECTS FOR CONSTITUTIONALISM IN POST-COMMUNIST COUNTRIES, *supra* note 270, at 70.

273. SIEGEL, *supra* note 269, at 89.

274. PROSPECTS FOR CONSTITUTIONALISM IN POST-COMMUNIST COUNTRIES, *supra* note 270, at 70.

275. SIEGEL, *supra* note 269, at 89.

276. *Id.*

the nation's ultimate holder of power.<sup>277</sup> "To obey [the czar's] authority, not only through fear but for the sake of conscience, is ordered by God himself," the new constitution proclaimed.<sup>278</sup>

When the Duma opened its first session in April 1906, reasons for optimism once more quickly vanished.<sup>279</sup> The majority of its members called for a series of new measures: greater rights of expression and association for trade unions, the release of political prisoners, and land reform.<sup>280</sup> Most notably of all, the Duma requested that the czar yield more power to the legislature, transforming Russia from an autocracy into a constitutional monarchy.<sup>281</sup> Instead of agreeing to any of these reforms, however, Nicholas II decided to take the opposite approach. In July 1906, after the legislative body had remained in session for just forty-two days, the czar dissolved the Duma entirely.<sup>282</sup>

In February 1907, the Second Duma convened.<sup>283</sup> Once again, its members recommended passage of several reforms, and once again, Nicholas II dismissed the legislators.<sup>284</sup> To avoid facing such recommendations again, Nicholas II used his power of ruling by decree when the Duma was out of session to enact new election laws that were drafted by his prime minister, Peter Stolypin.<sup>285</sup> These provisions disenfranchised a sizeable portion of the Russian population, reserving the greatest number of votes for Russia's richest landowners.<sup>286</sup> Consequently, the composition of the Third Duma and the Fourth Duma included considerably more conservative, pro-government members than the previous two Dumas.<sup>287</sup> At the outset of World War

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277. Czar Nicholas II made no secret of this fact, either, even telling his Minister of War, "I created the Duma, not to be directed by it, but to be advised." PIPES, *supra* note 70, at 154.

278. This language appeared in Article 4 of the Fundamental Laws. Article 5 went on to state that the czar was "sacred and inviolable." THE CONSTITUTIONS OF THE STATES AT WAR, 1914–1918 358 (Herbert Francis Wright ed., 1919).

279. EDWARD ACTON, RUSSIA: THE TSARIST AND SOVIET LEGACY 121 (2014); SIEGEL, *supra* note 269, at 89.

280. DARON ACEMOGLU & JAMES A. ROBINSON, ECONOMIC ORIGINS OF DICTATORSHIP AND DEMOCRACY 142 (2006); PETER OXLEY, RUSSIA, 1855–1991: FROM TSARS TO COMMISSARS 68 (2001).

281. See EDWARD ACTON, RUSSIA: THE TSARIST AND SOVIET LEGACY 121 (2014); SIEGEL, *supra* note 269, at 89.

282. SIEGEL, *supra* note 269, at 89; ASCHER, *supra* note 81, at 47; BERTRAND RUSSELL, PROPHECY AND DISSENT, 1914–16, at 246 (1988) ("With [the First Duma's] dissolution, the successful period of the Russian Revolution came to an end.").

283. ACEMOGLU & ROBINSON, *supra* note 280, at 142.

284. JONATHAN BROMLEY, RUSSIA 1848–1917, at 106 (2002).

285. *Id.* at 106–08.

286. *Id.* at 107.

287. See *id.*

I, the Duma voted to officially support Nicholas II and his advisors, and to dissolve itself until the war's end.<sup>288</sup> Deputies who voted against the czar on this issue were subsequently arrested.<sup>289</sup>

Stolypin held little regard for delivering on the promises of freedom of expression contained in the October Manifesto and, to a lesser extent, the Fundamental Laws. Under his oversight, individuals who were suspected of speaking or writing against the czar could be imprisoned, exiled, or even killed.<sup>290</sup> Between 1906 and 1909 alone, 2,694 Russians were sentenced to death.<sup>291</sup>

Surprisingly, the total number of newspapers in Russia actually increased slightly during this same time period, rising from approximately 602 Russian-language newspapers in 1908 to 972 Russian-language newspapers by 1914.<sup>292</sup> However, with the substantial powers derived from the Fundamental Laws at his disposal—including Article 87 of the Fundamental Laws, a provision permitting the government to circumvent the legislature entirely in “emergency” situations—Stolypin wielded his authority to eradicate real and perceived dissenters.<sup>293</sup> He justified such measures as necessary to prevent chaos and disorder.<sup>294</sup> “[W]hen in danger, the state must revert to the most rigorous, the most exceptional measures in order to avoid disintegration,” Stolypin declared in one address to the Duma. “This was, this is, and this will be so always and everywhere. . . . [T]he government came to the conclusion that the country expects from it a demonstration not of weakness but of faith.”<sup>295</sup>

Eventually, the various negative pressures of this era boiled over in another revolution. In October 1917, the Russian revolutionaries overthrew the czarist regime, and Vladimir Lenin seized full control of

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288. COMPETING VOICES FROM THE RUSSIAN REVOLUTION, *supra* note 70, at 15.

289. See ADAM B. ULAM, *STALIN: THE MAN AND HIS ERA* 125 (2007).

290. See, e.g., HELEN RAPPAPORT, *CONSPIRATOR: LENIN IN EXILE* 144–45 (2012).

291. Alexander N. Domrin, *A Lost War on Terror: Forgotten Lessons of the Russian Empire*, 19 MICH. ST. J. INT'L L. 63, 86 (2010). In those three years, more Russians received a death sentence than were executed in the vast nation's entire history. *Id.*

292. WALTER G. MOSS, *A HISTORY OF RUSSIA, VOLUME 2: SINCE 1855*, at 125 (2005).

293. See, e.g., Steven L. Hoch, *Between Two Revolutions: Stolypin and the Politics of Renewal in Russia* by Peter Waldron, 18 LAW & HIST. REV. 462, 462–63 (2000); PIPES, *supra* note 70, at 170.

294. See PIPES, *supra* note 70, at 170 (“Because he believed in the rule of law, he regretted having to [govern by decree], but he saw no alternative: such procedures were ‘a deplorable necessity’ justified on the grounds that at times the interests of the state took precedence.”).

295. Domrin, *supra* note 291, at 89.

the nation.<sup>296</sup> His Communist ideals of a classless society where people took only what they needed and contributed according to their individual abilities appealed to a population that had spent too long stuck in poor economic conditions.<sup>297</sup> Yet the notions of freedom of speech and expression seemed to be lost in the shuffle of this uprising. Such liberties were never part of Lenin's message to the people.<sup>298</sup> "Everyone is free to write and say whatever he likes, without any restriction," he stated. "But every voluntary association (including the [Communist] Party) is also free to expel members who use the name of the Party to advocate anti-Party views."<sup>299</sup>

Yet it was a different alleged comment that may have provided the most emblematic declaration of where freedom of speech and expression stood after Lenin assumed governance of Russia. "Freedom of speech?" he apparently asked incredulously soon after taking office. "We are not going to commit suicide."<sup>300</sup>

#### *D. Cuba*

In 1959, Fidel Castro's speech to the assembled masses at Cospedes Park instilled hope for restorations of traditional Cuban freedoms lost under the Batista dictatorship.<sup>301</sup> In that address, Castro emphasized the importance of freedom of expression, stating that anyone—even critics of his government—could express their viewpoints publically at any time without fear of state-sponsored censure.<sup>302</sup> The fact that Castro went to such lengths in this oration to discuss freedom of expression provided many Cubans with an overwhelming sense of hope that Castro would preserve the individual liberties described in the Constitution of 1940.<sup>303</sup>

Just two years later, however, Castro addressed the Cuban people

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296. ROBERT SERVICE, *A HISTORY OF MODERN RUSSIA* 26 (2013) ("Lenin became the country's ruler within months of tsarism's overthrow.").

297. See, e.g., PHILLIPS, *supra* note 261, at 123.

298. At least as early as 1905, Lenin was advocating for complete Party regulation of literature, and total Party control over works of "science, philosophy, and aesthetics." ERIKA GOTTLIEB, *DYSTOPIAN FICTION EAST AND WEST: UNIVERSE OF TERROR AND TRIAL* 121 (2001).

299. V. I. LENIN: 10 COLLECTED WORKS 47 (Andrew Rothstein, trans. & ed., Moscow, Progress Publisher 2010) (1905), <http://www.marx2mao.com/PDFs/Lenin%20CW-Vol.%2010.pdf>.

300. *Prominent Russians: Vladimir Lenin*, RUSSIPEDIA, <http://russiopedia.rt.com/prominent-russians/leaders/vladimir-lenin/>.

301. See FIDEL CASTRO READER, *supra* note 122, at 107.

302. See *supra* Part I.D.

303. See *supra* note 115 and accompanying text.

with remarks that carried a far different message. On its face, this speech was directed toward Cuba's "intellectuals," the artists and writers who demanded to know precisely how much dissent Castro would tolerate.<sup>304</sup> Castro began this address by promising to safeguarding the liberty of all Cuban citizens and condemning the Batista government for failing to do so.<sup>305</sup> About halfway through his remarks, however, the revolutionary leader began changing course, stating:

The Revolution must understand that [not everyone in Cuba supports its aims], and consequently must act in such a way that the entire sector of artists and intellectuals who are not genuinely revolutionary find a place to work and to create within the Revolution, and so that their creative spirit will have an opportunity and freedom for expression within the Revolution, even though they are not revolutionary writers or artists. This means that within the Revolution, everything goes; against the Revolution, nothing. Nothing against the Revolution, because the Revolution has its rights also, and the first right of the Revolution is its right to exist, and no one can stand against the right of the Revolution to be and to exist . . . since it takes in the interests of the people and signifies the existence of the entire nation.<sup>306</sup>

These words departed dramatically from Castro's initial promises of absolute freedom of expression for all people, including critics of the government.<sup>307</sup> With this new statement, Castro had changed the playing field, declaring that the only statements from artists and writers protected from government suppression were works that advanced the revolutionary state's purposes and aims.<sup>308</sup> Counterpoints in writing or artwork that criticized Castro's government and proposed alternative programs, reforms, or structures of governance would now receive no legal protection whatsoever.<sup>309</sup>

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304. See *Fidel Castro's Speech to Intellectuals on 30 June 1961*, Castro Speech Data Base, <http://lanic.utexas.edu/project/castro/db/1961/19610630.html>.

305. *Id.* ("In the first place, permit me to tell you that the Revolution defends freedom . . . that because of its essence, the Revolution cannot be an enemy of freedoms, and that if anyone fears that the Revolution is going to stifle his creative spirit, that Concern is unnecessary and has no reason for being.").

306. *Id.*

307. Compare *supra* text accompanying notes 121–123, with *supra* Part II.D.

308. *Castro's Speech to Intellectuals*, *supra* note 304 ("I believe this is quite clean. What are the rights of revolutionary or non-revolutionary writers and artists? Within the revolution, everything [:] against the revolution, no rights at all.").

309. See *id.*

Yet Castro was not done. “This will not be any law of exception for writers and artists,” he continued. “This will be a general principle for all citizens. It is a basic principle of the Revolution. Counterrevolutionaries—that is, the enemies of the Revolution—have no right against the Revolution, because the Revolution has a right: the right to exist, the right to develop, and the right to win.”<sup>310</sup> Then, a few minutes later, he delivered his definitive statement on this topic: “The rights of the enemies of an entire people do not count in comparison with the rights of that people.”<sup>311</sup>

By the end of this address, a new reality had descended upon all Cubans listening to their new leader’s remarks. Contrary to his revolutionary promises, Castro had now made it clear that he would not tolerate any speech or expression from any Cuban citizen criticizing or questioning the revolution.<sup>312</sup> By extension, since Castro himself was the face of the revolution, and now the leader of the post-revolutionary Cuban nation, no forms of expression against Castro and his allies would receive any protection under Cuban law.<sup>313</sup>

These remarks in 1961 accurately foreshadowed Cuba’s future under Castro’s leadership. Building upon his immense popularity following the overthrow of Batista, Castro quickly consolidated all governmental power under his new *Partido Comunista Cubano* (Cuban Communist Party), installing himself at the helm of the government.<sup>314</sup> This was the start of a one-party regime that dominated Cuba under Castro’s leadership, ultimately proving to be as intolerant of countervailing views as the Batista dictatorship that Castro had demolished.<sup>315</sup>

During his campaigns as a revolutionary, Castro had repeatedly promised to restore the Constitution of 1940 to protect fundamental

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310. *Id.*

311. *Id.*

312. *See id.*

313. *See id.*

314. TED HENKEN, CUBA: A GLOBAL STUDIES HANDBOOK 94 (2008).

315. *See, e.g.*, ANDRES J. SOLARES, CUBA: THE DISASTER OF CUBA’S REVOLUTION 87–89 (2010); KATHERINE FORD, POLITICS AND VIOLENCE IN CUBAN AND ARGENTINE THEATER 28–29 (2010) (focusing on state-imposed censorship of theatre and other forms of artistic expression under Castro’s regime in post-revolutionary Cuba); JONATHAN GREEN & NICHOLAS J. KAROLIDES, ENCYCLOPEDIA OF CENSORSHIP 132–33 (2009); Roger Reed, *Censorship in Castro’s Cuba: ‘Against the Revolution, Nothing’*, in PATTERNS OF CENSORSHIP AROUND THE WORLD 67 (Ilan Peleg, ed., 1993); Carlos Ripoll, *The Press in Cuba, 1952–1960: Authoritarian and Totalitarian Censorship*, in THE SELLING OF FIDEL CASTRO: THE MEDIA AND THE CUBAN REVOLUTION 83 (William E. Ratliff, ed., 1987).

freedoms of all Cuban citizens.<sup>316</sup> As a prime minister, however, he backed away from constitutional reform.<sup>317</sup> Consequently, Cuba existed without a constitution for sixteen years.<sup>318</sup> Lacking a written plan of government, Castro and the Communist Party installed laws by issuing decrees on an ad hoc basis.<sup>319</sup>

Amid this climate of unfettered power, the Castro administration systematically eliminated sources of actual or potential dissent.<sup>320</sup> The government closed independent print and broadcast media outlets, replacing them with multiple state-controlled newspapers, radio programs, and television stations.<sup>321</sup> A Cuban news agency soon emerged as the largest such agency in the developing world, establishing more than thirty offices worldwide to spread Castro's approved messages.<sup>322</sup> Castro himself became a frequent editorialist in the government-run newspapers, particularly the state-sponsored daily paper *Granma*.<sup>323</sup> Frequently, Castro would arrive unannounced at the *Granma* offices, painstakingly dictating matters as minute as where to place certain stories for the next day's edition.<sup>324</sup>

Chief among these new methods of expression control was the Committee of Revolutionary Orientation, charged with ensuring that

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316. Kemper, *supra* note 115; CHOMSKY, *supra* note 99, at 37.

317. Reed, *supra* note 315, at 67; Ripoll, *supra* note 315, at 94–95.

318. Instead of a constitution, Castro enacted a “Fundamental Law” with one central purpose: to grant himself complete control over the Cuba. Under this Fundamental Law, many civil liberties and political rights that the Constitution of 1940 had guaranteed to Cuban citizens evaporated completely. Jonathan Wachs, *Reviving the 1940 Cuban Constitution: Arguments for Social and Economic Rights in a Post-Castro Government*, 10 AM. U. INT’L L. REV. 525, 545–46 (1996).

319. Mark P. Sullivan, *Cuba: Issues for the 112th Congress*, CONG. RESEARCH SERV., Jan. 28, 2011, at 4; ARON T. ULRICH, FOCUS ON CUBA: CURRENT ISSUES AND DEVELOPMENTS 5 (2008).

320. See, e.g., SOLARES, *supra* note 315, at 87–89; Reed, *supra* note 315, at 67.

321. See, e.g., THE MEDIA IN LATIN AMERICA 119 (Jario Lugo-Ocando, ed., 2008) (“The media were nationalized, and by the end of 1960 the whole system was under state control. . . . [C]ommercial media had become not only ideologically anachronistic, but also economically unfeasible: all the external trade and most of the internal, the banks . . . and more than a third of agriculture, were already in the hands of the government.”).

322. NICHOLAS J. CULL, DAVID CULBERT & DAVID WELCH, PROPAGANDA AND MASS PERSUASION: A HISTORICAL ENCYCLOPEDIA, 1500 TO THE PRESENT 69 (2003).

323. ENCYCLOPEDIA OF CONTEMPORARY LATIN AMERICAN AND CARIBBEAN CULTURES 668–69 (Daniel Balderston, Mike Gonzalez & Ana M. Lopez, eds., 2002); CULL, CULBERT & WELCH, *supra* note 322, at 69; THE MEDIA IN LATIN AMERICA, *supra* note 321, at 122, 125.

324. U.S. CENTRAL INTELLIGENCE AGENCY, CUBA: CASTRO’S PROPAGANDA APPARATUS AND FOREIGN POLICY 6 (Nov. 1984), [http://www.foia.cia.gov/sites/default/files/document\\_conversions/89801/DOC\\_0000972183.pdf](http://www.foia.cia.gov/sites/default/files/document_conversions/89801/DOC_0000972183.pdf) [hereinafter “CIA BRIEF.”].

all Cubans followed the guiding principles of the revolution.<sup>325</sup> Overseen by two of Castro's closest advisors, Antonio Perez Herrero and Orlando Fundora Lopez, the agency closely supervised every aspect of Cuban public life.<sup>326</sup> In doing so, it became the engine from which Castro's propaganda machine ran, with the government using various measures—including threats, intimidation, and punishments from around-the-clock surveillance to criminal prosecutions—to prevent dissidents' voices from reaching a widespread audience.<sup>327</sup> Anyone who disobeyed Castro's precepts for the life of "the new Cuba" was labelled an enemy of the revolution and penalized as a threat to the security of the Cuban state.<sup>328</sup> By 1965, at least twenty thousand political prisoners were incarcerated in Cuba's prisons and jails.<sup>329</sup>

Within the first decade after Castro assumed power, nearly ten percent of Cuba's population had left the country, primarily migrating to locations within the United States.<sup>330</sup> Perhaps motivated in part by this discontent, and quite likely desiring to codify the principles of "his revolution," Castro and his allies began pushing for the creation and adoption of a formal written constitution.<sup>331</sup> Indeed, on February 1976, a new constitution went into effect, allegedly approved by an astounding 97.7 percent of all Cuban voters.<sup>332</sup>

Yet anybody expecting Castro to finally deliver on his promise to

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325. HALPERIN, *supra* note 113, at 154.

326. CIA BRIEF, *supra* note 324, at 6–7.

327. See HALPERIN, *supra* note 113, at 154. This body was later renamed the Ideological Department of the Central Committee, but its basic mission was still the same. THE MEDIA IN LATIN AMERICA, *supra* note 321, at 123.

328. See, e.g., ALEXANDER DAWSON, LATIN AMERICA SINCE INDEPENDENCE: A HISTORY WITH PRIMARY SOURCES 249 (2014) ("Cubans, [Castro] argued, must unify to confront Cuba's internal and external enemies. . . . As he convinced more and more Cubans that a liberated Cuba depended on his communist Revolution, he was also able to convince many that opposition amounted to treason."); DIGITAL CULTURES AND THE POLITICS OF EMOTION: FEELINGS, AFFECT, AND TECHNOLOGICAL CHANGE 199 (Athina Karatzogianni & Adi Kuntsman, eds., 2012) ("Protecting the Revolution from its enemies must therefore serve as a hard limit to freedom of expression in Cuba."); ROBERT E. QUIRK, FIDEL CASTRO 411—13 (1995).

329. CUBAN COMMUNISM 673 (8th ed., Irving Louis Horowitz, ed., 1995). This number is likely quite low, as Castro himself released this estimate through his state-controlled media outlets. *Id.* However, even this likely underestimated figure still represents a high ratio of prisoners: more than forty prisoners per 100,000 people in the total populace. *Id.* Castro justified this large number of political prisoners by stating that they were enemies of the state, or "counterrevolutionaries." See *id.*

330. *Id.* This trend continued after 1969 in significant numbers, with many Cubans migrating to the State of Florida. See *id.* at 26—29.

331. See Sullivan, *supra* note 319, at 4; Wachs, *supra* note 318, at 546.

332. Sullivan, *supra* note 319, at 4.

restore the Constitution of 1940 would have been vastly disappointed by this document. The constitution did guarantee a number of valuable social benefits for all Cubans, including free health care and free education for all citizens.<sup>333</sup> On the other hand, however, the Constitution of 1976 effectively formalized the censorship and state control that had become the norm in Cuban everyday life.<sup>334</sup> In particular, Article 53 of the constitution proclaimed:

Citizens have freedom of speech and of the press *in keeping with the objectives of socialist society*. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other organs of the mass media are State and social property and *can never be private property*. This assures their use at the exclusive service of the working people and in the interest of society. The law regulates the exercise of these freedoms.<sup>335</sup>

Interestingly, Article 54 guaranteed all “working people” the freedoms of “assembly, demonstration, and association.”<sup>336</sup> However, this apparent advancement in the realm of free expression was vastly curtailed later in the document. Article 62 opened the door to complete governmental regulation of all individual liberties by stating:

None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the existence and objectives of the Socialist state, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law.<sup>337</sup>

Under this framework, the Castro government now had constitutional authority to unilaterally ban any speech or expression questioning any professed governmental aim.<sup>338</sup> Not surprisingly, the

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333. See William T. D’Zurilla, *Cuba’s 1976 Socialist Constitution and the Fidelista Interpretation of Cuban Constitutional History*, 55 TUL. L. REV. 1223, 1247–48 (1981).

334. Peter T. Johnson, *The Nuanced Lives of the Intelligentsia*, in ENRIQUE A. BALOYRA & JAMES A. MORRIS, *CONFLICT AND CHANGE IN CUBA* 146 (1993).

335. CUBAN CONST. OF 1976, art. 53, <http://www.constitutionnet.org/files/Cuba%20Constitution.pdf> (hereinafter “CONST. OF 1976”).

336. *Id.* at art. 54.

337. *Id.* at art. 62. As a reminder of how harsh punishments for violating the objectives of the Socialist state in Cuba and the commands of the Cuban government, Article 65 read, in pertinent part: “Treason against one’s country is the most serious of crimes; those who commit it are subject to the most severe penalties.” *Id.* at art. 65.

338. See D’Zurilla, *supra* note 333, at 1253–54.

regime exercised this power frequently in the years following the new constitution's adoption, leading to virtually complete domination of all speech and expression by the state.<sup>339</sup> To this day, backed by this blank check to prohibit "anti-government" speech and expression, Cuba remains one of the most heavily censored nations in the world.<sup>340</sup>

### *E. Tunisia and Egypt*

Of the nations examined within this article, perhaps the hardest to assess in the free speech and expression context are Tunisia and Egypt. Only five years have passed since the Arab Spring uprisings in both nations.<sup>341</sup> Consequently, an especially small window of time exists in which to evaluate the post-revolutionary responses regarding free speech and expression in both nations, a period far shorter than the other states discussed here.

However, even within this comparatively small time frame, several events in both nations demonstrate the now-familiar phenomenon of governments abridging free speech and expression in the aftermath of revolutions, despite strong revolutionary sentiments and promises to the contrary.<sup>342</sup> Both nations' new governments have engaged in both civil and criminal prosecutions of multiple dissenters expressing their views peaceably in the media, through forms of visual art and music, and on the public streets of their communities.<sup>343</sup> Concurrently, both nations have developed a climate of considerable government intrusion into the speech and expression of individuals and private organizations, demanding compliance with certain state-

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339. See, e.g., THE MEDIA IN LATIN AMERICA, *supra* note 321, at 121–22; Reed, *supra* note 315, at 67.

340. Rick Gladstone, *Eritrea and North Korea Are World's Most Censored Countries*, *Advocacy Group Says*, N.Y. TIMES (Apr. 21, 2015), [http://www.nytimes.com/2015/04/22/world/eritrea-and-north-korea-are-worlds-most-censored-countries-advocacy-group-says.html?\\_r=0](http://www.nytimes.com/2015/04/22/world/eritrea-and-north-korea-are-worlds-most-censored-countries-advocacy-group-says.html?_r=0); *Cuba, Iran, China Among 10 Countries with Most Censorship*, *CPJ Says*, FOX NEWS, (Apr. 21, 2015), <http://latino.foxnews.com/latino/politics/2015/04/21/cuba-iran-china-among-10-countries-with-most-censorship-cpj-says/>.

341. Tunisia's uprising that toppled Ben Ali occurred in January 2011. SOCIAL MOVEMENTS, MOBILIZATION, AND CONTESTATION, *supra* note 149, at 241. Egypt's revolt that forced Mubarak to flee the country occurred in February 2011. Kirkpatrick, *supra* note 153.

342. For a review of promises demanded by revolutionaries in Tunisia and Egypt, and promises made by a number of their leaders, see generally *supra* Part I.E.

343. See, e.g., Charlotte Schriwer, *Graffiti Arts and the Arab Spring*, in ROUTLEDGE HANDBOOK OF THE ARAB SPRING: RETHINKING DEMOCRATIZATION 381 (2014); Andreas Gorzewski, *Post-Arab Spring Censorship on the Rise*, DEUTSCHE WELLE, July 4, 2013, <http://www.dw.de/post-arab-spring-censorship-on-the-rise/a-16725701>.

approved positions, objectives, and beliefs.<sup>344</sup>

Notably, however, both nations have also developed new constitutions that pay significant attention to protecting freedom of expression. Article 31 of the constitution that Tunisia ratified in 2014 declares that “[f]reedom of opinion, thought, expression, information and publication shall be guaranteed.”<sup>345</sup> With a nod to the central role of the Internet and telecommunications in the 2011 revolution, Article 32 guarantees Tunisian citizens “the right to information and the right of access to information and communication networks.”<sup>346</sup> Subsequent provisions also guarantee the right to academic freedom, the right to vote, the right to establish political parties and unions, and the right to assemble in peaceful demonstrations.<sup>347</sup>

Egypt’s new constitution, also enacted in 2014, likewise provides strong language regarding freedom of speech and expression. The leading provision in this area is Article 65, which states: “Freedom of thought and opinion is guaranteed. Every person shall have the right to express his/her opinion, verbally, in writing, through imagery, or by any other means of expression and publication.”<sup>348</sup> Articles 66 and 67 protect freedoms of scientific research and artistic expression.<sup>349</sup> Article 73 prohibits the state from monitoring peaceful private meetings, and allows Egyptian citizens to assemble peaceably after serving the government with proper notice of the intent to demonstrate.<sup>350</sup>

Both of these constitutions appear to demonstrate a new commitment to freedom of speech and expression in these nations. Yet both plans of government also contain troubling provisions regarding these individual liberties, too. For instance, Article 1 of the Tunisian constitution pronounces Islam to be the official religion of Tunisia.<sup>351</sup> This gives rise to the question of whether the Tunisian government

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344. See, e.g., Joshua Kurlantzick, *In the Arab Spring’s Aftermath, Democracy Retreats*, BUSINESSWEEK (Jan. 19, 2012), <http://www.cfr.org/democratization/arab-springs-aftermath-democracy-retreats/p27138>.

345. TUNISIA CONST. OF 2014, art. 31, [https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf](https://www.constituteproject.org/constitution/Tunisia_2014.pdf).

346. *Id.* at art. 32.

347. *Id.* at art. 33, 34, 35, 36 & 37.

348. EGYPT CONST. OF 2014, art. 65, [https://www.constituteproject.org/constitution/Egypt\\_2014.pdf](https://www.constituteproject.org/constitution/Egypt_2014.pdf).

349. *Id.* at art. 65 & 66.

350. *Id.* at art. 73. The Constitution of 2014 calls this the guarantee of “Freedom of House.” See *id.*

351. TUNISIA CONST., art. 1.

would utilize this provision to stifle speech and expression that is anti-Islamic, questions or objects to certain precepts of Islam, or is deemed by the government to fly in the face of certain Muslim values.<sup>352</sup>

Article 6 of this constitution raises further questions by declaring the state to be “the guardian of religion,” and by proclaiming that the Tunisian government shall undertake “the protection of the sacred.”<sup>353</sup> Again, this seems to open the door for the state to ban or limit speech and expression on the basis of violating Muslim beliefs.<sup>354</sup> Heated ongoing debates about introducing a Tunisian penal law forbidding “blasphemy” of “sacred values” underscore the possibility of such proscriptions.<sup>355</sup> Furthering this concern is the language of the second sentence within Article 31, the provision guaranteeing freedom of expression for Tunisian citizens. Implicit in the statement that “[t]hese freedoms shall not be subject to prior censorship” is the possibility—and perhaps even the likelihood—that the government will engage in post-publication or post-utterance abridgements of speech and expression. The continued existence of laws from the Ben Ali regime allowing the government to punish individuals or groups for publishing materials deemed harmful to “public morals” prove that this type of action is far from an impossibility.<sup>356</sup>

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352. From the outset of the post-Arab Spring government, this concern has occupied a significant place in the minds of both Islamic conservatives and liberal secularists. *See, e.g.*, Alexandra Sandels, *Tunis Crowds Gather for Anti-Censorship March*, L.A. TIMES, Oct. 16, 2011, [http://latimesblogs.latimes.com/world\\_now/2011/10/tunisia-freedom-of-expression-demonstration-elections-islamists-freedom-of-speech-nessma-tv-politics.html](http://latimesblogs.latimes.com/world_now/2011/10/tunisia-freedom-of-expression-demonstration-elections-islamists-freedom-of-speech-nessma-tv-politics.html).

353. TUNISIA CONST., art. 6.

354. The language of this article appears to deliver the Tunisian government a blank check to prosecute any form of speech and expression as violating sacred beliefs. Without any definition of “sacred” or any further structure regarding the state’s role as “guardian of religion,” the government can wield tremendous power to censor speech and expression on religious grounds.

355. *See generally* HUMAN RIGHTS FIRST, BLASPHEMY, FREEDOM OF EXPRESSION, AND TUNISIA’S TRANSITION TO DEMOCRACY (2013); Alvin Powell, *A Warning From Inside Tunisia*, HARV. GAZETTE, Sept. 18, 2012, <http://news.harvard.edu/gazette/story/2012/09/a-warning-from-inside-tunisia/>. Throughout the debates leading up to the enactment of Tunisia’s 2012 and 2014 Constitutions, many Tunisian citizens pushed for a constitutional provision that specifically forbade blasphemous expression and allowed the government to criminalize such expression. *See* SHADI HAMID, TEMPTATIONS OF POWER: ISLAMISTS AND ILLIBERAL DEMOCRACY IN A NEW MIDDLE EAST 182 (2014); Antoine Lambroschini, *Blasphemy Clause to Be Dropped from New Tunisian Constitution, Speaker Says*, GLOBE AND MAIL, Oct. 12, 2012, <http://www.theglobeandmail.com/news/world/blasphemy-clause-to-be-dropped-from-new-tunisian-constitution-speaker-says/article4608262/>.

356. *See, e.g.*, Eric Reidy, *Questioning Freedom of Speech in Tunisia*, AL JAZEERA, Jan. 30, 2015, <http://www.aljazeera.com/news/2015/01/questioning-freedom-speech-tunisia-150126104509780.html>.

In the new Egyptian constitution, installed after a military coup toppled the post-Arab Spring president Morsi and replaced him with military leader Abdel Fattah al-Sisi, substantial questions remain regarding the government's interactions with the media.<sup>357</sup> Article 70 guarantees freedom of the press for Egyptian citizens.<sup>358</sup> However, in the same breath, it states that the Egyptian government must receive notification before any publisher can disseminate a newspaper, and that the state will regulate "procedures of establishing and owning" television, radio, and Internet media outlets.<sup>359</sup> Article 71 allows the government to suspend or shut down media entities during "times of war or general mobilization."<sup>360</sup> Such provisions grant the state significant latitude to monitor and control the media and its messages to the general public.

Another disconcerting component of the Egyptian constitution appears within Article 50, a section focusing on "Egypt's civilization and cultural heritage, whether physical or moral." According to the language within Article 50, any form of "aggression" toward this physical or moral heritage is a criminal offense.<sup>361</sup> Importantly, the Article does not attempt to define the term "aggression." Therefore, an expansive reading of this provision could easily lead to widespread state censorship of any speech and expression that the government deems to be "aggression" toward a particular aspect of Egypt's physical or moral heritage.<sup>362</sup>

Just as important as these constitutional words are the actions occurring in both nations following their revolutions in 2011. Within short time periods after both Mubarak and Ben Ali were ousted, citizens in both Egypt and Tunisia were arrested and charged under laws that prohibited broad categories of speech and expression. For example, Tunisian rap musician Weld El 15 was sentenced to two

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357. See, e.g., Khaled Diab, *Egypt's Freedom of Repression*, AL JAZEERA, Dec. 28, 2014, <http://www.aljazeera.com/indepth/opinion/2014/12/egypt-freedom-repression-2014122883332498794.html>; Sherif Mansour, *As al-Sisi Promises Freedom of Speech, TV Host Youssef Is Put Under Investigation*, COMM. FOR PROTECTION OF JOURNALISTS, Sept. 2014, <https://cpj.org/blog/2014/04/as-al-sisi-promises-freedom-of-speech-satirical-tv.php>.

358. EGYPT CONST., art. 70.

359. *Id.*

360. *Id.* at art. 71.

361. See EGYPT CONST., art. 71.

362. Once again, the lack of any level of definition is problematic here. Such vague language could easily allow the Egyptian government to use "aggression" toward Egypt's heritage as a pretext for punishing individuals who engage in speech or expression that the government simply does not like and wants to suppress.

years in prison for producing a music video in which he called the police force “dogs.”<sup>363</sup> Egyptian television personality Bassem Youssef was charged multiple times under a statute prohibiting insults against the president, ultimately ending his show, leaving Egypt, and travelling to the United States.<sup>364</sup> Tunisian television executive Nabil Karoui was fined for airing a film that included an animation representing the Muslim prophet Mohammed.<sup>365</sup> Egyptian authorities imprisoned award-winning Al Jazeera journalists Baher Mohamed, Peter Greste, and Mohamed Fahmy for coverage that allegedly threatened Egypt’s national security and damaged the nation’s reputation.<sup>366</sup>

Many other outspoken individuals suffered the same fate.<sup>367</sup> Bloggers, playwrights, visual artists, journalists with various media outlets, sympathizers with rival political movements, and citizens of all stripes who engaged in protests or were perceived as dissidents faced censure and sanctions from the new governments in Egypt and Tunisia.<sup>368</sup> The situation seemed to grow particularly oppressive in Egypt, where more than 10,000 people were jailed—many of them on charges relating to speech and expression—between February 2011 and January 2012 alone.<sup>369</sup> A tremendous increase in cases for

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363. Tarek Amara, *Rapper Weld el 15 Gets Two Years in Jail for Calling Police Dogs in Song*, THE INDEPENDENT, Mar. 22, 2013, <http://www.independent.co.uk/arts-entertainment/music/news/rapper-weld-el-15-gets-two-years-in-jail-for-calling-police-dogs-in-song-8546156.html>.

364. Dean Obeidallah, *Egypt’s Jon Stewart Comes to America*, THE DAILY BEAST, Feb. 9, 2015, <http://www.thedailybeast.com/articles/2015/02/09/egypt-s-jon-stewart-comes-to-america.html>.

365. Marc Fisher, *Tunisian Court Finds Broadcaster Guilty in Showing God’s Image*, WASH. POST (May 3, 2012), [http://www.washingtonpost.com/world/africa/tunisian-who-showed-persepolis-on-tv-fined-in-free-speech-case/2012/05/03/gIQA0GpzyT\\_story.html](http://www.washingtonpost.com/world/africa/tunisian-who-showed-persepolis-on-tv-fined-in-free-speech-case/2012/05/03/gIQA0GpzyT_story.html).

366. Lourdes Garcia-Navarro, *A Year Later, Al Jazeera Journalists Still Imprisoned in Egypt*, NPR, Dec. 29, 2014, <http://www.npr.org/2014/12/29/373835075/a-year-later-al-jazeera-journalists-still-imprisoned-in-egypt>; *Who are the al-Jazeera Journalists Tried in Egypt?*, BBC, Feb. 13, 2015, <http://www.bbc.com/news/world-middle-east-27943387>.

367. See Calkins, *supra* note 131; Diab, *supra* note 357; Reidy, *supra* note 356.

368. See, e.g., *Tunisian Blogger Sentenced for Defaming Army*, AL JAZEERA (Jan. 20, 2015, 8:26 PM) <http://www.aljazeera.com/news/middleeast/2015/01/tunisian-blogger-jailed-defaming-army-2015120192721195412.html>; Chad Elias, *From Street to Screen: Graffiti, ‘New Media’ and the Politics of Images in Post-Mubarak Egypt*, in WALLS OF FREEDOM: STREET ART OF THE EGYPTIAN REVOLUTION 89–91 (2014); Victor Salama, *Three Years After the Arab Spring, Tunisian and Egyptian Musicians Continue to Fight Censorship*, GLOBAL VOICES (Aug. 29, 2014, 5:00 AM) <http://globalvoicesonline.org/2014/08/29/music-censorship-in-tunisia-and-egypt/#>; Tarek Amara, *Tunisian Artists Cry for Help Against Religious Extremists*, REUTERS (Sept. 19, 2012, 11:36 AM) <http://www.reuters.com/article/2012/09/19/us-tunisia-salafi-art-idUSBRE88I0SM20120919>.

369. Ironically, this mass imprisonment occurred even after Egypt’s new military regime

“religious defamation” occurred during the same time period.<sup>370</sup> As one commentator stated about the situation in Egypt, “[E]ven a hint of sedition can lead to being thrown in jail.”<sup>371</sup>

In the beginning, one might reasonably suspect that the continued censorship came at least in part from government officials who were part of the former regimes but remained in power after the revolutions, or from laws that simply remained “on the books” in the immediate turbulence after the old regime ended.<sup>372</sup> However, as new leaders were installed in office and the governmental crackdowns on speech and expression continued, it became evident that these measures were more than just a carryover from past practices.<sup>373</sup> Indeed, one of the most recent blows to free speech came in December 2014, when the Egyptian President al-Sisi announced that he would soon issue a law criminalizing speech or expression that insulted the January 2011 revolution and the takeover of al-Sisi’s government in June 2013.<sup>374</sup>

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promised to scale back its use of the “emergency laws” so frequently invoked to censor speech and expression under Mubarak’s rule. *See Egypt’s Infamous Emergency Law Expires*, AL JAZEERA, (May 31, 2012, 17:20 GMT) <http://www.aljazeera.com/news/middleeast/2012/05/2012531134021732460.html>; *see also* Huda Badri & Adham Youssef, *Egypt is Witnessing Less Freedom of Expression Than Under Mubarak or Morsi*: John R. Bradley, DAILY NEWS EGYPT (Aug. 23, 2014), <http://www.dailynewsegypt.com/2014/08/23/egypt-witnessing-less-freedom-expression-mubarak-morsi-john-r-bradley/>.

370. Gorzewski, *supra* note 343. One of the toughest challenges to freedom of expression in post-Arab Spring Egypt comes from criticisms of Islam or advocacy for religions beyond Islam. *See, e.g.*, James Michael Nosselt, *Free Exercise After the Arab Spring: Protecting Egypt’s Religious Minorities Under the Country’s New Constitution*, 89 IND. L.J. 1653, 1658, 1683 (2014) (stating that Egyptian law continues to leave speech and expression against Islam or in favor of other religious beliefs unprotected).

371. Dan Murphy, *Egypt’s Constitutional Referendum: It’s Not About Democracy Any More*, CHRISTIAN SCI. MONITOR (Jan. 15, 2014), <http://www.csmonitor.com/World/Security-Watch/Backchannels/2014/0115/Egypt-s-constitutional-referendum-It-s-not-about-democracy-any-more.-video>.

372. For instance, after Ben Ali fled Tunisia, Ben Ali’s former Prime Minister Mohamed Ghannouchi—a man who had held multiple ministerial posts under Ben Ali’s regime since 1989—immediately assumed the role of interim president. Accused of being too close to the old regime, he ultimately resigned. Kim Willsher, *Tunisian Prime Minister Mohamed Ghannouchi Resigns Amid Unrest*, THE GUARDIAN (Feb. 27, 2011, 2:58 PM), <http://www.theguardian.com/world/2011/feb/27/tunisian-prime-minister-ghannouchi-resigns>. In Egypt, after Mubarak stepped down, the top official of the military government was Field Marshal Hussein Tantawi, who “served for decades as a top official of Mr. Mubarak’s government.” Kirkpatrick, *supra* note 153.

373. *See, e.g.*, Hend Kortam, *Calls for a ‘Religious Revolution’*, DAILY NEWS EGYPT (Jan. 13, 2015), <http://www.dailynewsegypt.com/2015/01/13/calls-religious-revolution>.

374. Sonia Farid, *Insulting Egypt’s Revolutions: Criminalization vs. Free Speech*, AL ARABIYA NEWS, Dec. 11, 2014, <http://english.alarabiya.net/en/perspective/analysis/2014/12/11/Insulting-Egypt-s-revolutions-Between-criminalization-and-free-speech.html>.

The president claimed that such a law would be “the only way to show respect to Egyptians who sacrificed their lives for freedom and democracy.”<sup>375</sup> A number of Egyptians greeted this announcement with praise.<sup>376</sup> Others, however, responded angrily, stating that this statute would be just another restriction on what they could say and do regarding their nation’s government.<sup>377</sup>

On the whole, one could reasonably argue that the question of how the post-revolutionary governments in Tunisia and Egypt treated the freedoms of speech and expression remains an evolving matter. Certainly, time will tell how both of these post-revolutionary nations are judged in this category. However, one can still draw conclusions about the initial reactions regarding these freedoms after the Arab Spring revolutions in both states. An outward commitment to freedom of speech and expression, from public statements to speeches before the United Nations and political leaders from other nations to strong language in new constitutions, characterizes Tunisia and Egypt immediately following their 2011 revolts. However, the real-world situations in both states demonstrate an overall environment of chilling and repressing expression that the regimes in power deems unfavourable or dangerous — a reality that seems far away from the ideals of liberty and openness that the leaders of these revolutions promoted.<sup>378</sup>

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375. *Id.*

376. *See id.* (quoting political leaders stating that the government needed this law to maintain stability in Egypt and quoting a legal expert stating that the criminal charges for “insults” were justified as speech and expression likely to incite violence).

377. Shadi Bushra, *Egypt to Criminalize Insults to ‘Revolutions’ of 2011 and 2013: Spokesman*, REUTERS, Dec. 3, 2014, <http://www.reuters.com/article/2014/12/03/us-egypt-sisi-revolutions-idUSKCN0JH2AM20141203> (criticizing al-Sisi and his cabinet for trying to criminalize speech and expression solely to consolidate his power over the country); Nourhan Magdi, *‘Insults’ to Jan[.] 25 and June 30 Will Be Criminalized*, CAIRO POST, Dec. 3, 2014, <http://www.thecairopost.com/news/130184/news/insults-to-jan-25-and-june-30-will-be-criminalized-2> (“Lawyer Mohamed Zarea told VetoGate the law is “coercion” to citizens to adopt one opinion, which he added is inconsistent with the freedom of opinion and expression guaranteed in the constitution.”).

378. In addition to the reportage of current conditions already discussed, see, e.g., Andrew Hammond, *Cinema and Television*, in *THE CAMBRIDGE COMPANION TO MODERN ARAB CULTURE* 171–72 (Dwight F. Reynolds, ed., 2015); Mark Bousquet, *Holding Strong Against the Rise of Censorship in Egypt and Tunisia*, COMIC BOOK LEGAL PROTECTION FUND, Apr. 16, 2013, <http://cblpdf.org/2013/04/holding-strong-against-the-rise-of-censorship-in-egypt-and-tunisia/>.

### III. CONNECTING THE DOTS: IDENTIFYING TRENDS LEADING POST- REVOLUTIONARY GOVERNMENTS TO ABRIDGE PROMISED RIGHTS OF FREE SPEECH AND EXPRESSION

The preceding sections described six revolutions in which freedom of speech and expression was a primary objective for the revolutionaries, and a key promise for the government that either took or was permitted to retain power following the revolution. Despite these goals and promises, however, the populations in each of these post-revolutionary states quickly experienced substantial government-imposed reductions in freedom of speech and expression. In laws and deeds, these new or reformed governments significantly abridged speech and expression rights of the people in short order, breaking their promises to the citizenry and defeating one of the principal goals for which the revolution was fought in the first place.

As discussed in Part I, each nation entered its respective revolution with a unique perspective about freedom of speech and expression. Some movements, such as the Cuban Revolution, called for absolute legal protection for all forms of speech and expression. Others, such as the American Revolution and the French Revolution, arose with the population comprehending a more limited measure of free speech and expression, allowing for restrictions on categories of speech that were injurious in some fundamental way to the state or to the general public's well-being. Still, even those nations utilizing a narrower starting-point definition of free speech and expression recognized a degree of individual liberty that was considerably greater than what their immediate post-revolutionary governments provided.<sup>379</sup>

Thus, remarkable consistency in immediate outcomes exists among the six revolutions described here, even though these events occurred in different nations, for different causes, and during a wide range of differing time periods. The remaining question, then, is whether any consistency also exists in the causes of these post-revolutionary governmental reactions against the promised civil liberties of free speech and expression. This section takes up that important question and identifies some answers by studying commonalities among the post-revolutionary state actions in the nations discussed above.

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379. See generally *supra* Parts I–II.

A. Revolutionary Promises Regarding Free Speech and Expression Establish False Expectations Among the Population

Hopeful governmental leaders have much to gain from making sizeable promises to revolutionaries. For a political aspirant, winning popularity among revolutionary participants could result in a fast track to power if the revolution ultimately succeeds. For an existing officeholder, currying favour with the supporters of a revolution that seems destined to succeed can lead to self-preservation, remaining in power after agreeing to grant certain demands of the revolutionary movement.

Unfortunately, the promises made during a revolutionary fervor frequently prove to be untenable in the light of reality.<sup>380</sup> Plenty of vows that sound beautiful on paper or in a speech do not translate effectively to the realities of day-to-day governance.<sup>381</sup> Transitions into a brand-new or dramatically reformed government are typically messy on many levels, and successes do not occur overnight.<sup>382</sup> Yet few post-revolutionary governments want to engage in tempering the expectations of the public. Instead, they generally prefer to ride the wave of promises that brought them into power or retained them in power during the revolution.<sup>383</sup> Before long, a widening chasm opens between the promised state and the actual state, leading to newfound unrest among a population that hoped for instantaneously brighter

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380. For one example, consider the often-invoked revolutionary promise of greater—or even total—equality among a nation’s citizens. Such a claim presents a tremendously attractive picture to a frustrated citizenry. However, even if the new post-revolutionary government manages to enact laws providing equality in “the formal, legal sense,” achieving actual equality among all citizens in the nation eludes the government. See FRIEDRICH JULIUS STAHL, *THE DOCTRINE OF STATE AND THE PRINCIPLES OF STATE LAW* 60 (Ruben Alvarado, trans. & ed., 2009).

381. *See Id.*

382. *See, e.g.*, EGYPT IN WILLIAMSBURG: CHALLENGES OF A POST-REVOLUTIONARY ERA 4 (Reginald Dale, ed., 2014); VLADIMIR MAU & IRINA STARODUBROVSKAIA, *THE CHALLENGE OF REVOLUTION: CONTEMPORARY RUSSIA IN HISTORICAL PERSPECTIVE* 126–28 (2001); Nicholas Kristof, *Egypt’s Reassuringly Messy Democracy*, SEATTLE TIMES, Mar. 31, 2011, <http://www.seattletimes.com/opinion/egypts-reassuringly-messy-democracy/>.

383. Some political scientists believe this attitude to be emblematic of a “honeymoon period,” during which anything seems possible, even the most implausible promises made in the heat of revolutionary fervor. *See* Jack A. Goldstone, *Bringing Regimes Back In: Explaining Success and Failure in the Middle East Revolts of 2011*, in *THE ARAB REVOLUTION OF 2011: A COMPARATIVE PERSPECTIVE* 68 (Saïd Amir Arjomand, ed., 2015); BAILEY STONE, *THE ANATOMY OF REVOLUTION REVISITED: A COMPARATIVE ANALYSIS OF ENGLAND, FRANCE AND RUSSIA* 200, 209, 221 (2013); PHILIP ABBOTT, *POLITICAL THOUGHT IN AMERICA: CONVERSATION AND DEBATE* 46 (4th ed. 2009); CRANE BRINTON, *THE ANATOMY OF REVOLUTION* 91 (1965).

days.<sup>384</sup>

In the United States, for instance, the First Amendment to the Bill of Rights promises that “Congress shall make *no law*” abridging free speech, a pledge that seems absolute.<sup>385</sup> However, a look at the context of the times demonstrates that the drafters of this language almost certainly did not intend to prevent the government from ever restricting the speech of American citizens, even if this language gives the impression that such limitations are always constitutionally forbidden.<sup>386</sup> In France, the Declaration of the Rights of Man and of the Citizen swore allegiance to liberty of expression that did not “disturb the public order” — a guarantee that neither King Louis XVI nor Robespierre would ultimately uphold.<sup>387</sup> In Cuba, Castro promised absolute protection of speech and expression, even speech and expression that denounced him and his allies.<sup>388</sup> This vow, too, quickly went by the wayside.<sup>389</sup> Similar results arose from the other revolutions studied in this article as well.<sup>390</sup>

Some of these promises evaporate because the leader making or agreeing to the pledges never truly intends to keep them.<sup>391</sup> In early twentieth-century Russia, the czar’s promises regarding freedom of expression in the October Manifesto fall into this category.<sup>392</sup> Commentators describe the czar’s aching reluctance to surrender any powers traditionally associated with absolutist rule to the Russian people.<sup>393</sup> Doing so seems to be solely an act of self-preservation in

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384. This realization of promises not kept is part of the natural and often-rapid emotional decline following the post-revolutionary “honeymoon period.” See Jon Lee Anderson, *Where Protests End*, NEW YORKER, Feb. 26, 2014, <http://www.newyorker.com/news/daily-comment/where-protests-end>; BRINTON, *supra* note 383, at 237.

385. U.S. CONST. amend. I.

386. See *supra* notes 17–22 and accompanying text.

387. See *supra* Parts I. B., Part II.B.

388. See *supra* Part I.D.

389. See *supra* Part II.D.

390. For example, consider the promises that revolutionary leaders in Tunisia and Egypt made during the Arab Spring, and the ultimate results that led to continued censorship of speech and expression in both nations. Compare *supra* Part I.E, with Part II.E.

391. S. Curry Jansen & Brian Martin, *Exposing and Opposing Censorship: Backfire Dynamics in Freedom-of-Speech Struggles*, 10 PACIFIC JOURNALISM REV. 29, 31 (2004) (“[It] is well known that free expression is given widespread lip service in the same contexts in which censorship is widely practiced.”).

392. See *supra* Part II.C.

393. WORTMAN, *supra* note 81, at 363 (stating that Nicholas II told members of the imperial military from the outset that he might require them to use force to dissolved the Duma at his whim).

the face of a desperate citizenry.<sup>394</sup> From the outset, it seems that the czar made few efforts to fulfill these vows, failing to even create a reasonable façade of trying to pursue these promised reforms.<sup>395</sup>

Others, however, terminate despite the best intentions of their makers, crumbling because they are virtually impossible to fully execute. Many revolutionary promises regarding freedom of speech and expression fall into this latter category. Establishing a society in which speech and expression is never restricted is arguably an attractive proposition at first glance. In practice, however, such a concept becomes unsustainable. Several categories of speech and expression could spur a nation's complete downfall if left completely unchecked, such as fraud, conspiracy to commit crimes, betrayal of state secrets to an enemy force, and speech or expression aimed at inciting mass violence.<sup>396</sup> Thus, expecting any government to refrain from ever imposing any restrictions on speech and expression is a hope that is far from realistic.<sup>397</sup>

Still, it is a hope to which many people cling after hearing the words of revolutionary leaders, comments that are often presented in absolute or near-absolute terms. Before long, however, these leaders find such unqualified promises impossible to keep — if they ever intended to keep them in the first place — and turn to a level of censorship in which they had seemingly vowed never to engage.<sup>398</sup> This, in turn, leads to the potential for dissatisfaction among a once-expectant, now-disillusioned, citizenry, establishing more reasons for

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394. PIPES, *supra* note 70, at 44 (“The [October Manifesto] was extracted from Nicholas II under duress, virtually at the point of a gun. For this reason he never felt morally obligated to respect it.”).

395. *See supra* Part II.C.

396. For just a few of many relatively recent articles discussing this topic and the need for some state-produced restrictions upon speech and expression, see Martin H. Redish & Michael J. T. Downey, *Criminal Conspiracy As Free Expression*, 76 ALB. L. REV. 697, 697–700 (2013); Todd Stedford, *Prior Restraint and Censorship: Acknowledged Occupational Hazards for Government Scientists*, 31 WM. & MARY ENVTL. L. & POL’Y REV. 725, 725–26 (2007); Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience*, 117 HARV. L. REV. 1765, 1765–77 (2004).

397. Indeed, even a *laissez-faire* free speech theorist such as John Stuart Mill allowed for significant exceptions to his pro-freedom of expression mindset. According to Mill, restrictions that guarded against “serious forms of perceptible damage that nobody should be forced to suffer” were allowable in the name of public justice. *See, e.g.*, Jonathan Riley, *Mill, Liberalism, and Exceptions to Free Speech*, in FREEDOM OF EXPRESSION: COUNTING THE COSTS (Glen Newey, ed., 2009).

398. *See generally supra* Part II (describing the multiple instances in which post-revolutionary governments quickly breach their revolutionary promises to the people regarding freedom of speech and expression).

the post-revolutionary government to restrict the expressions of a dissenting populace.

*B. Post-Revolutionary Governments Fear Overthrow from the “Revolutionary Spirit” That Brought Them to Power*

The period following a revolution is a volatile time. Outcomes of such a substantial upheaval are rarely neat and tidy.<sup>399</sup> Newly installed leaders or holdover governors who are permitted to remain understand that people of their nation possess the capacity to revolt when dissatisfied.<sup>400</sup> With one partially or completely successful revolution complete, members of the population may feel compelled to stage another uprising if they feel as if their needs are still going unaddressed.<sup>401</sup>

Additionally, none of the revolutions discussed in this article received uniform support from a nation’s populace.<sup>402</sup> Therefore, even after one revolution ends, opponents of the post-revolutionary government still remain among the citizenry, dissenters who could gather support and ultimately stage a revolution of their own.<sup>403</sup> Situations like the rise of the Jacobin faction in France, the Bolshevik overthrow of the Czar Nicholas II in Russia, and the post-Arab Spring coup in Egypt that installed al-Sisi in power demonstrate that these post-revolutionary governmental overthrows are certainly within the realm of possibility.<sup>404</sup>

In an effort to prevent such actions, post-revolutionary leaders turn to measures restricting the public’s freedom to express opposing views, hoping that stifling the spread of dissent will preserve the new government’s existence. For instance, Czar Nicholas II’s severe restrictions on protestors, media outlets, and other forms of expression even after issuing the October Manifesto arose, at least in part, from

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399. See, e.g., EMORY ELLIOTT, *REVOLUTIONARY WRITERS: LITERATURE AND AUTHORITY IN THE NEW REPUBLIC, 1725-1810* 11 (2014); Alexander S. Gard-Murray & Yaneer Bar-Yam, *Complexity and the Limits of Revolution: What Will Happen to the Arab Spring?*, in *CONFLICT AND COMPLEXITY: COUNTERING TERRORISM, INSURGENCY, ETHNIC AND REGIONAL VIOLENCE* 290 (Philip vos Fellman, Yaneer Bar-Yam & Ali A. Minai, eds., 2014).

400. Indeed, history has proven that rapid changes in post-revolutionary governments, and even full-fledged revolts in the wake of a revolutionary transition, are quite common. See, e.g., BRINTON, *supra* note 383, at 123, 237, 250..

401. See, e.g., STEVEN A. COOK, *THE STRUGGLE FOR EGYPT: FROM NASSER TO TAHIR SQUARE* 300 (2011).

402. See *supra* Parts I & II.

403. See *id.*; see also BRINTON, *supra* note 383, at 123, 237, 250.

404. See *supra* Parts II.B–D.

the fear that too much dissention would result in the complete loss of his power.<sup>405</sup> When he dissolved the First and Second Duma, he did so only after the discussions regarding substantial governmental reforms intensified to a level that threatened his monarchy.<sup>406</sup>

Likewise, Castro's strict control on speech and expression in post-revolutionary Cuba focused directly on preventing the counterrevolutionary forces within the small nation from gaining enough traction to throw him out of office.<sup>407</sup> Laws criminalizing "insulting the president" and other government leaders in Egypt and Tunisia serve as protective blankets for the leaders currently in power within these still-combustible states, shielding them from dissenting statements that could plant seeds for a new revolution among their citizens.<sup>408</sup> The Alien and Sedition Acts in the post-revolutionary United States were aimed at preserving the Federalist Party's new stranglehold on the federal government, keeping the rival Democratic-Republicans out of office.<sup>409</sup>

Vladimir Lenin allegedly once compared granting the general public freedom of speech with committing suicide.<sup>410</sup> For many immediate post-revolutionary leaders, this comparison seems apt. The individuals studied within this article were well-aware that extreme social turmoil brought them into power or permitted them to remain in power after assenting to popular demands.<sup>411</sup> Their fear of meeting a

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405. *See supra* Part II.C.

406. *Id.*

407. For instance, consider the statements that Castro made shortly after assuming office: "Counterrevolutionaries — that is, the enemies of the Revolution — have no right against the Revolution . . . The rights of the enemies of an entire people do not count in comparison with the rights of that people." *See* notes 310–11. Article 62 of Castro's Constitution of 1976 expresses a similar focus on preventing Cuban "counterrevolutionary" forces from gathering, declaring that Cuban citizens could not exercise any freedom — even constitutionally protected freedoms—that the government deemed "contrary to the existence and objectives of the socialist State."

408. *See supra* notes 144–147 and accompanying text (describing vaguely worded laws passed under previous regimes in Tunisia and Egypt that greatly limit expression from political dissidents). One can find another example of such self-protecting efforts from al-Sisi's vow to enact a law criminalizing any expression that "insults" the January 2011 or June 2013 revolutions in Egypt. *See supra* notes 374–375 and accompanying text.

409. *See supra* notes 185–189 and accompanying text.

410. *Supra* note 300.

411. King Louis XVI and Robespierre, Czar Nicholas II, Castro, the post-Ben Ali leadership in Tunisia, the post-Mubarak leadership in Egypt, and even John Adams and the Federalist Party heads in the United States all understood that their positions in power were tenuous, a fact underscored by the volatile political and social climate in each of their respective nations. *See* Part II, *supra*.

similar fate, either at the hands of dissatisfied revolutionaries or through an uprising of newly empowered opponents of the revolution, is understandable. In such situations, abridging freedom of expression becomes a self-preservation tool, one that leaders in the aftermath of revolutions wield with varying levels of impunity.<sup>412</sup>

However, this reason alone cannot explain why post-revolutionary leaders restrict expression to such a vast degree. One would expect that revolutionaries who had overthrown the personal liberties of speech and expression would rebel again once the post-revolutionary government proscribed these freedoms. Similarly, one could imagine that opponents of the revolution could leverage the broken promises regarding free speech and expression to raise support for overthrowing the post-revolutionary regime. Given that post-revolutionary governments manage to prevent overthrow by limiting expression without being overthrown by citizens angry about such abridgements, other factors must play into the equation of why these restrictions emerge and prevail in the aftermath of revolutions.

### *C. Freedom of Expression Is Easy to Curtail*

Among the ways in which governments exercise control over their citizens, constraining freedom of expression is one of the easier measures to execute. All of the post-revolutionary leaders discussed in this article accomplished these restrictions through a variety of quickly and simply implemented actions. The most common methods that these states employed to abridge freedom of expression without sparking an uprising include:

#### 1. Portraying Expression Restrictions as Necessary for Personal Safety

This is perhaps the tool that post-revolutionary governments utilize most frequently in reducing or eliminating free speech and expression rights. By depicting certain types of speech as dangerous to the entire nation's well-being, leaders often obtain support from citizens who are understandably concerned about their own security. This strategy permits the state wide latitude to limit expression, particularly expression that criticizes the government in power, its activities, and its purported values.<sup>413</sup> Denouncing dissenters as "enemies" or "subversives," and couching boundaries upon speech and

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412. See *supra* Part II.

413. See *supra* Part II.

expression in terms of protecting all citizens from harm, frequently lets post-revolutionary governments abridge freedom of speech and expression for a reason that many people can accept as quite beneficial to their personal welfare.<sup>414</sup>

This methodology is not unique to post-revolutionary states.<sup>415</sup> However, it appears particularly effective in nations that have recently experienced a revolution.<sup>416</sup> Perhaps this is due at least in part to the traumatic impact that any significant uprising leaves upon many members of the population.<sup>417</sup> After through a period of social upheaval, it seems logical that plenty of individuals—particularly people who opposed the revolution or were ambivalent about the revolution—would support a government that pledged to protect them and their loved ones from harm, even if rigorous state-imposed limits upon speech and expression were purportedly necessary for such protections.

In the United States, passing and enforcing the Alien and Sedition Acts epitomized the effective usage of this strategy.<sup>418</sup> Although these statutes were highly charged with political preservationist objectives, the public face of these laws focused on protecting Americans from harm.<sup>419</sup> Weeding out anyone within the nation who sympathized with France, a new enemy that was allegedly marshalling forces for an imminent attack against the United States, captured significant support

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414. *See supra* Part II.

415. Plenty of so-called “developed” states engaged in this practice in the past, and plenty continue to leverage this strategy today. For a couple of examples, see BARRY BUZAN, *PEOPLE, STATES, AND FEAR: AN AGENDA FOR INTERNATIONAL SECURITY STUDIES IN THE POST-COLD WAR ERA* 81–82 (2d ed. 2008); RICHARD A. POSNER, *NOT A SUICIDE PACT: THE CONSTITUTION IN A TIME OF NATIONAL EMERGENCY* (2006); Marjorie Heins, *The Supreme Court and Political Speech in the 21st Century: The Implications of Holder v. Humanitarian Law Project*, 76 ALB. L. REV. 561 (2013).

416. *See supra* Part II (discussing multiple examples of government leaders successfully utilizing this strategy in the immediate aftermath of revolutions).

417. While the present article is not a psychological study, it seems almost self-evident that living among social and political turmoil—including acts of violence—for any significant period of time would leave a significant mental scar and a desire for peace and stability. Other commentators agree with this notion. *See, e.g.*, Barry Shapiro, *The Impact of Trauma in the Early French Revolution*, 34 W. SOC’Y FOR FRENCH HIST. 73 (2006), <http://quod.lib.umich.edu/w/wsfh/0642292.0034.005?view=text;rgn=main>; Richard Lezin Jones, *Trauma Runs Deep for Exiles: Those Who Suffered Under Castro Maintain Keen Memories of Loss*, PHILADELPHIA INQUIRER (Apr. 9, 2000), [http://articles.philly.com/2000-04-09/news/25591475\\_1\\_elian-gonzalez-exiles-cuban-revolution](http://articles.philly.com/2000-04-09/news/25591475_1_elian-gonzalez-exiles-cuban-revolution) (“A social revolution is a profound, heart-rending, traumatic event”).

418. *See supra* Part II.A..

419. *Supra* notes 172–172, 182–184, and accompanying text.

from the American population.<sup>420</sup> While plenty of people soon criticized these laws, the strong anti-French sentiments in the United States provided the ideal platform for enacting a law promising to discover and punish any subversive enemies trying to do their work inside America's borders.<sup>421</sup>

More than two hundred years after the United States enacted the Alien and Sedition Acts, one can witness a similar effect within post-Arab Spring Egypt and Tunisia.<sup>422</sup> National laws punishing people who criticize the government, its leaders, or the accepted state religion appear before the citizenry under the umbrella of maintaining order, preserving basic values, and protecting people from harm.<sup>423</sup> As with the Alien and Sedition Acts, this message has gathered public support for many of these expression-restricting laws in Egypt and Tunisia, including the Egyptian measure banning anyone from criticizing the 2011 and 2013 revolutions and the Tunisian penal provisions forbidding speech and expression that "undermine public morality, although these measures certainly face plenty of public opposition as well."<sup>424</sup>

In Cuba, Castro also mastered this framework after seizing power. His speech to the Cuban people in 1961 announced that "[t]he rights of the enemies of an entire people do not count in comparison with the rights of that people."<sup>425</sup> Anybody whose expressions opposed or criticized the Castro regime was pronounced an enemy of the revolution and an enemy of the entire nation.<sup>426</sup> From that point forward, utilizing a platform that pitted his "revolutionaries" against "counterrevolutionaries," Castro succeeded in essentially eradicating the speech and expression rights for these "enemies of an entire people."<sup>427</sup> While plenty of Cubans did not like these blanket bans on dissent, and many Cuban citizens migrated elsewhere, Castro's declarations that these laws and policies kept Cubans safe from "enemies" maintained enough acceptance among the populace that the

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420. *Supra* notes 172–177.

421. *Supra* notes 178–184 and accompanying text.

422. *See supra* Part II.E.

423. This includes provisions of the new written constitutions adopted in both Tunisia and Egypt. *Id.*

424. *See, e.g., supra* notes 373–377.

425. *Supra* note 304.

426. *See supra* Part II.D.

427. Castro accomplished this using his early program of ruling by decree and his constitutionally permitted privileges under the Constitution of 1976. *See supra* notes 319–320 and accompanying text.

Communist leader avoided overthrow.<sup>428</sup>

Still another example occurred in France after the monarchy of Louis XVI fell. Notably, it was the “Committee on Public Safety,” a body that by its very name professed to protect French citizens from harm, that quickly seized control of the country.<sup>429</sup> The laws that soon followed the Committee’s empowerment continued along this pathway of ostensibly saving the nation from itself.<sup>430</sup> The Law of Suspects, for example, permitted the government to punish all people whom the state believed to be “partisans of tyranny and federalism, and the enemies of freedom.”<sup>431</sup> Once again, the structure of rooting out enemies to protect the citizenry found a home within the post-revolutionary freedom of expression abridgment rhetoric.

Openings for these constraints upon expression often arise within the constitutions or other guiding documents that post-revolutionary leaders create. The most overt example among the nations studied in this article comes from Cuba’s Constitution of 1976, which blatantly outlawed any forms of expression questioning or criticizing the revolution, the Communist Party, or any values related to the Communist Party’s leadership.<sup>432</sup> Similarly, France’s Declaration of the Rights of Man and the Citizen and the subsequent Constitution of 1791, Russia’s Fundamental Laws, and the recent Tunisian and Egyptian constitutions all contain language reserving the government’s power to proscribe expression for the state’s “greater good.”<sup>433</sup>

These provisions generally formed and continued with significant acceptance, if not outright support, from the populations of these post-revolutionary states. Thus, when it comes to state-sponsored attempts to abridge freedom of speech and expression, it appears that accompanying these restrictions with the promise of ensuring safety from a real or perceived foe is a powerful and effective means of delivery.

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428. *See id.*; *see also supra* notes 327–329.

429. *Supra* note 233.

430. *See supra* notes 239–245 and accompanying text.

431. *Supra* note 245.

432. *Supra* notes 334–337 and accompanying text.

433. *See supra* notes 219–222, 269–278, 351–362, and accompanying text.

## 2. Leveraging Post-Revolutionary Nationalism

Emotions run high in the aftermath of a revolution.<sup>434</sup> For the victors of a revolt, the period that immediately follows often is awash in a robust, almost blinding sense of pride in their triumph.<sup>435</sup> As a unifying force, this newfound nationalism can be an important means of settling a still-unstable populace, or rallying the people behind the unified objective of preserving and strengthening their new governmental creation.<sup>436</sup> As a means of legitimizing broken revolutionary promises regarding freedom of expression, however, these sentiments offer an influential instrument that a nation's new leaders can use.

Nationalism becomes a particularly effective device within states where a revolution results in a complete change in power.<sup>437</sup> Fierce post-revolutionary pride and a sense of uniting the new nation against a common enemy helped spur the passage of the Sedition Act in the United States.<sup>438</sup> Castro used the inflamed spirit of patriotism in the “new Cuba” to gain support for his restrictions on speech and expression, with a noticeable number of Cuban citizens accepting his proclamations that these decrees were for the greater national good.<sup>439</sup> Today, a substantial number of individuals in post-revolutionary Egypt and Tunisia independently voice their support for statutes and actions that hamper freedom of speech and expression in their nations, stating that these measures keep their countries' values and identities—including their religious heritages—strong.<sup>440</sup> Some Egyptian and Tunisian citizens openly state that too much freedom of expression could weaken the core of their nations, citing this as the central reason

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434. See generally *supra* Part II.

435. See Mehran Kamrava, *Ruling Bargains in the Middle East*, in KAMRAVA, *supra* note 209, at 44; SAMUEL FARBER, *ORIGINS OF THE CUBAN REVOLUTION RECONSIDERED* 5, 130–31 (2007); JONATHAN D. SASSI, *A REPUBLIC OF RIGHTEOUSNESS: THE PUBLIC CHRISTIANITY OF THE POST-REVOLUTIONARY NEW ENGLAND CLERGY* (2001); Avner Ben-Amos, *Monuments and Memory in French Nationalism*, 5 *HIST. & MEMORY* 50, 55 (1993).

436. See *id.* Some commentators refer to this phenomenon specifically as “state nationalism.” Peri Pamir, *Nationalism, Ethnicity and Democracy: Contemporary Manifestations*, *INT’L J. OF PEACE STUDIES*, [http://www.gmu.edu/programs/icar/ijps/vol2\\_2/pamir.htm](http://www.gmu.edu/programs/icar/ijps/vol2_2/pamir.htm).

437. See, e.g., *supra* Part II.A–E.

438. *Supra* notes 162–177 and accompanying text.

439. See, e.g., *supra* notes 325–329 and accompanying text.

440. See Mansoor Moaddel, *The Birthplace of the Arab Spring: Values and Perceptions of Tunisians and a Comparative Assessment of Egyptian, Iraqi, Lebanese, Pakistani, Saudi, Tunisian, and Turkish Publics*, *NAT’L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSE TO TERRORISM* 3 (2013), [http://mevs.org/files/tmp/Tunisia\\_FinalReport.pdf](http://mevs.org/files/tmp/Tunisia_FinalReport.pdf).

why a “Western conception” of free speech and expression may never succeed in their lands.<sup>441</sup>

Nationalistic sympathies tend to draw attention away from the loss of individual liberties, subordinating these freedoms to the overall well-being of the nation.<sup>442</sup> For some ardently patriotic individuals, these sentiments give certain post-revolutionary governments a free pass to constrain speech and expression. To them, the broken promises regarding these freedoms are acceptable, or at least tolerable, as long as the government’s professed reasons for limiting personal rights focus on improving the betterment of the nation as a whole.

### 3. Lack of a Meaningful Opposition Force

The examples of post-revolution censorship described in this article were aimed largely at stifling opponents to the newly empowered government.<sup>443</sup> In many of these cases, the lack of a well-organized opposition force allowed these restrictive measures to flourish. Without enough people combating the state’s broken promises regarding freedom of speech and expression, the new government’s laws and actions proscribing these liberties were able to remain in effect without even facing a significant challenge to their continuation.

This effect contributed largely to the creation of the Sedition Act in the aftermath of the American Revolution.<sup>444</sup> With the Federalist Party controlling every branch in Washington, D.C., this restrictive measure became a law with relative ease.<sup>445</sup> While the Democratic-Republicans grew to oppose the Sedition Act, this party did not have enough of a presence to truly challenge the Federalists at the time when Congress passed this bill.<sup>446</sup> With one faction monopolizing the federal government, the interests of that group dominated affairs in the United

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441. See RAPHAEL ISRAELI, *FROM ARAB SPRING TO ISLAMIC WINTER* 294–95 (2013); John Irish, *At U.N., Muslim World Questions Western Freedom of Speech*, REUTERS, Sept. 28, 2012, <http://www.reuters.com/article/2012/09/29/us-un-assembly-islam-idUSBRE88R1J20120929>.

442. See, e.g., DAVID BROWN, *CONTEMPORARY NATIONALISM* 95 (2003); LIAH GREENFIELD, *NATIONALISM: FIVE ROADS TO MODERNITY* 176 (1992).

443. See *supra* Part III C–D.1 and D.3; see also Ben-Amos, *supra* note 435, at 55.

444. See *supra* Part II.A.

445. See *supra* notes 185 & 189.

446. The Democratic-Republicans adamantly opposed the Alien and Sedition Acts, and publically expressed their displeasure with these pieces of legislation. However, as the minority party in all three branches of the federal government, they could not prevent these four bills from passing. See *supra* notes 185–189 and accompanying text.

States at that time, with few areas where opposing voices could establish footholds.<sup>447</sup>

An even starker example of this principle at work appears in nations where an opposition movement did not even have a noticeable voice. After the Committee for Public Safety took over the French government, for example, Robespierre and his allies eradicated every dissenter—real and perceived—whom they could find.<sup>448</sup> Czar Nicholas II and Prime Minister Stolypin did the same for a number of years following the Revolution of 1905.<sup>449</sup> Likewise, Castro was quite successful in removing any dissidents from Cuba under his leadership, quickly smothering any noticeable chances for countervailing views to gain a presence in public or political discourse.<sup>450</sup>

Interestingly, the two nations studied here that appeared to have the most active movements opposing restrictions from the immediate post-revolution regimes are Tunisia and Egypt.<sup>451</sup> Almost immediately after post-Arab Spring leaders in these countries instituted strict limits on freedom of speech and expression, protests against these measures emerged among members of the public and from members of both the formal and informal media. Still, while these objections from citizens were vocal and considerable, they did not rise to the level of becoming an organized force that could gain the attention of the leadership in power.<sup>452</sup> In a sense, parallels exist between this situation and the circumstances facing the United States at the time when Congress passed the Sedition Act, with many vociferous individuals opposing the censorship but not enough people to force the issue for the political party in power.<sup>453</sup>

Examples studied within this article demonstrate that dissent is commonly the enemy of new, still-unstable post-revolutionary governments.<sup>454</sup> Even the best-intentioned leaders resort to measures

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447. *See id.* (describing the ways in which the Alien and Sedition Acts seemed poised to continue benefitting the already-dominant Federalist Party).

448. *Supra* notes 243–247 and accompanying text.

449. *Supra* notes 289–291 and accompanying text.

450. *Supra* notes 327–329 and accompanying text.

451. *See supra* Part II.E.

452. Opponents of state-sponsored censorship in Tunisia gained and continue to gain global attention for their objections to these measures. Overall, however, these opponents still have not gained enough political traction to lead to repeals of these measures. *See supra* part II.E.

453. *See supra* Part II.A.

454. *See supra* Part II.

preventing negative discourse about them.<sup>455</sup> Without a meaningful opposition force in place within the nation, however, the national government's leaders may not have any politically motivated reasons to lessen the restrictions upon free speech and expression, as these leaders benefit from controlling public comments about the government and are not facing any threat for their office's seats outside their party machinery.<sup>456</sup>

On the surface, one-sided viewpoints and constraints that curb criticism about the government appear to strongly benefit the individuals currently in power.<sup>457</sup> Therefore, a significant group of organized opponents to the present leaders is necessary for a post-revolutionary state to prevent its new political elites from taking the easy and unchallenged road of creating speech and expression restrictions for the public.

#### 4. *Easy to Punish, Easy to Avoid*

Every post-revolutionary government examined here punished violators of their restrictions upon speech and expression.<sup>458</sup> These penalties ranged from threats to surveillance to prison sentences to torture and death.<sup>459</sup> Most likely, these punishments produced a chilling effect on speech and expression in these nations.<sup>460</sup> Public knowledge of these acts likely deterred citizens from testing the waters with types of expression that opposed the post-revolutionary

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455. *See id.*; *see also supra* Part III.A–B and *infra* Part III.C–D.

456. For example, the Federalist Party did not believe that the Sedition Act would anger enough of their supporters to outweigh the benefits of censoring what largely amounted to Democratic-Republic speech and expression. *See supra* Part II.A. In an even more extreme example, Castro faced no meaningful opposition for the position of head of state, and thus believed that he could continue censoring any dissenting speech from the “fringe” of Cuban society without actually being toppled from office. *See supra* Part II.D.

457. *See supra* Part II (describing examples in the Federal Party-dominated United States, France under the control of the Committee of Public Safety, post-revolutionary Russia under Czar Nicholas II, Cuba under Castro, and Tunisia and Egypt under control of various leaders who restricted speech and expression to reduce political dissent and preserve their positions in power).

458. *See supra* Part II.

459. *See supra* Part II.

460. Deterrence is a common rationale for punishment, stopping both the offender and others within society from repeating the criminalized act. Kevin C. Kennedy, *A Critical Appraisal of Criminal Deterrence Theory*, 88 DICK. L. REV. 1, 1–2 (1984). Thus, if the state punishes a particular type of speech or expression, it logically follows that the state holds a goal of stopping that individual and other individuals within that jurisdiction from continuing that form of speech or expression.

government.<sup>461</sup>

Such punishments were easily instituted by the post-revolutionary states. Frequently, they arose from hastily constructed laws, or from governmental measures that bypassed the lawmaking process entirely. In France, for example, the Reign of Terror erupted out of Jacobin faction's takeover in the national legislature, pushing through measures such as the wide-ranging Law of Suspects and freely allowing the state to execute any alleged dissidents.<sup>462</sup> In Russia, Czar Nicholas II and Prime Minister Stolypin ordered attacks on anybody assumed to be an enemy of the regime and its practices, notwithstanding the language in the czar's October Manifesto that claimed to carve out a new level of free speech in the nation.<sup>463</sup> Post-revolutionary states that imposed less draconian measures still instituted widespread punishments aimed at restricting expression, penalties that almost certainly deterred individuals from exercising the freedom of expression that the revolutions had promised.

Additionally, the effectiveness of these punishments likely increased due to the relatively minor consequences of complying with the restrictive laws. If the laws in question prohibited an essential function of survival— the ability to earn a living, for instance, or the ability to obtain adequate nutrition for an individual and his or her family, or the ability to gain satisfactory shelter—then the individual calculus might become different. From a risk-rewards perspective, an individual would seem most likely to violate a law and risk a harsh punishment if breaching the provision could produce significant rewards.<sup>464</sup> It seems reasonable to expect that a law restricting or eliminating a fundamental need would inspire a large number of people to disobey such a measure. By extension, one would reasonably predict that many people would be less likely to break a law where violators were punished harshly and where the forbidden acts were essentially superfluous.<sup>465</sup>

Freedom of speech and expression are hardly superfluous.<sup>466</sup> At

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461. See, e.g., *infra* text accompanying notes 462–463.

462. See *supra* notes 232–247 and accompanying text.

463. See *supra* notes 289–291.

464. See JONATHAN WOLFF, *ETHICS AND PUBLIC POLICY: A PHILOSOPHICAL INQUIRY* 200 (“[I]f the rewards of breaking the law are high enough, then the risks could be worth taking. The cost-benefit analysis can be in favour [sic] of breaking the law.”).

465. *Id.*

466. CASS R. SUNSTEIN, *WHY SOCIETIES NEED DISSENT* 97 (2005) (“In a free society, government cannot defend restrictions by pointing to the risk that the speech will prove

the same time, however, speech and expression about forbidden topics is not vital for survival. Plenty of people live perfectly happy lives without ever publically expressing their views on a contentious topic or a controversial position. A person can lose the ability to speak on a tremendous range of issues, yet this loss probably will not directly prevent that person from having a shelter and feeding his or her family and maintaining a safe, stable life.

Although this person may want to express his or her views about particular subjects, he or she might also recognize that giving up this liberty has a far less life-altering effect than facing the guillotine under Robespierre's reign of terror, combating the violence sanctioned by the regime of Czar Nicholas II, ending up behind bars and winding up with a criminal record, or facing harassment and constant surveillance from law enforcement authorities.<sup>467</sup> While political theorists widely recognize the freedoms of speech and expression as fundamental rights, many individuals balancing those rights against the stiff penalties they could incur for exercising those rights understandably find obedience with state-sponsored censorship to be the easier way to go.

*D. Freedom of Speech and Expression Are Not Primary Concerns for Many Citizens*

This last common factor is in some respects the most troubling. Government leaders abridging freedom of speech and expression for self-interested reasons is problematic, but not entirely unexpected. Utilizing newfound power to break promises regarding freedom of speech and expression in a post-revolutionary nation is disappointing, but stems from an understandable stimulus of trying to preserve that new power in a still-unstable state. Indeed, as recognized already, limiting speech and expression in certain areas might even prove socially advantageous for a nation seeking to establish the rule of law within its borders.

More complex, however, are the sentiments of the people themselves. Discussions among the preceding paragraphs describe

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dangerous or harmful.”); ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 26 (1948) (describing freedom of speech and expression as “the thinking process of the community.”); Martin H. Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591,591–92 (1982) (summarizing a series of important societal values served well by permitting a wide-ranging freedom of speech and expression).

467. See *supra* notes 190–197, 233–247, 289–291, 327–329, 363–371 and accompanying text.

common government-induced measures encouraging citizens to accept—or, at the very least, obey—the quickly imposed constraints upon their promised liberties of speech and expression.<sup>468</sup> Yet another component seems to be at work among the revolutions described here, an element that is already apparent within many of the previous observations: the average citizen’s overall devaluation of personal speech and expression rights.

Various examples discussed above involve individual prioritizing other interests above freedom of speech and expression. To begin with, when harsh punishments against dissenters chilled the dissemination of free speech and expression, the people did not rise up *en masse* against the government.<sup>469</sup> In part, this lack of revolt came because it simply was much easier and safer for the average citizen to refrain from the prohibited varieties of expression rather than challenging the new regime’s authority.<sup>470</sup> On balance, many individuals found silence less of a hardship than the likelihood of facing police surveillance, prison time, or even execution.<sup>471</sup>

Yet this trend goes beyond mere acquiescence to a heavy-handed government. Several instances described within this article represent situations where citizens inside a post-revolutionary state actually supported strict limits upon free speech and expression. Safety and security from an apparent enemy or other form of danger, for instance, trumped free speech and expression in several post-revolutionary states — not only in the government’s messages, but also in the citizenry’s adoption and promotion of those messages.<sup>472</sup> In certain states, nationalistic pride in a new government encouraged individuals to allow reductions of their speech and expression rights for the professed “greater good” of national stability and strength.<sup>473</sup> Ardent beliefs in particular values led to citizens praising state-imposed censorship on speech and expression that criticized, satirized, or violated those values.

This pattern underscores the reality that on the hierarchy of

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468. *See supra* Part III A-C.

469. *See supra* Part III C.4.

470. *See id.*

471. *See id.* Some criminologists label this phenomenon as “rational choice theory.” LARRY SIEGEL, *CRIMINOLOGY: THE CORE* 84–85 (2014); *THE REASONING CRIMINAL: RATIONAL CHOICE PERSPECTIVES ON OFFENDING* 1–10 (Derek B. Cornish & Ronald V. Clarke, eds., 2014).

472. *See supra* Part III.C.1.

473. *See supra* Part III.C.2.

human needs, freedom of speech and expression is nowhere near the top. Far higher on the list of basic human concerns are tangible everyday matters such as shelter, nutrition, healthcare, and safety from harm.<sup>474</sup> Even in nations where these basic needs are met, freedom of speech and expression is still often not the paramount concern for many people.<sup>475</sup> Advancing personal economic interests commonly seems to outweigh a desire for freedom of speech, as do the interests of enforcing religious or moral beliefs in society.<sup>476</sup>

Paradoxically, however, many supporters of uprisings demand that the revolution's outcomes include broader allowance for free speech and expression.<sup>477</sup> Still, shortly after the revolution ends, these individual liberties return to their much lower place on the food chain.<sup>478</sup> One might even argue that speech and expression are not even fundamentally important during the revolutions themselves. Debatably, the actual tipping points that led to revolution in the examples described above generally were economic problems.<sup>479</sup> Thus, one could reasonably ask whether these nations would have seen revolts under conditions of equivalent government repression but greater economic stability.

This is not a referendum on the character or commitment of citizens in post-revolutionary nations. In fact, it makes sense that most individuals would prioritize a broad range of tangible needs, wants, or goals above the rather elusive and often-contentious objective of freedom of expression. In day-to-day living, restrictions on the ability to earn money or to receive adequate medical care or other material objectives have a concrete impact. By contrast, the impact of restrictions upon freedom of expression in an individual's daily life may seem only frustrating or discouraging, or even completely inconsequential. This becomes particularly important in a post-revolutionary state. After passing through an extended period of

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474. Or, as several Tunisian citizens aptly described it to one commentator: "What use is freedom of speech and voting every five years if I can't feed my children?" JOHN R. BRADLEY, *AFTER THE ARAB SPRING: HOW ISLAMISTS HIJACKED THE MIDDLE EAST REVOLTS* 19 (2012).

475. *See supra* Part III.C.1–2.

476. *See, e.g., supra* notes 294–297, 374–378 and accompanying text.

477. *See generally supra* Part I.

478. *See supra* Part II.

479. For instance, if France had not experienced such extreme financial hardships under its series of unsuccessful finance ministers, the French monarchy likely would not have summoned the Estates-General, thus preventing one of the key events that triggered the revolution. *See* THEDA SKOCPOL, *STATES AND SOCIAL REVOLUTIONS: A COMPARATIVE ANALYSIS OF FRANCE, RUSSIA, AND CHINA* 63–64 (1979).

turmoil and strain, many people can view freedom of speech and expression as a liberty that they can easily live without—and perhaps even live better without—as long as the post-revolutionary government is addressing their other, more tangible needs.

Of course, this statement does not apply to all people in a post-revolutionary state. Plenty of individuals vehemently argue against speech and expression prohibitions, often putting themselves at great risk to do so.<sup>480</sup> Still, in trying to discern why post-revolutionary governments so often succeed in breaking promises regarding liberties of speech and expression, one cannot ignore the fact that for many citizens, these rights are not by themselves worth a new fight. Indeed, a consequential number of individuals view government restrictions upon speech and expression as measures that are actually beneficial overall, worthy of advancement regardless of what the revolution itself seemingly promised to achieve.<sup>481</sup>

#### IV. CONCLUSION

The question of why post-revolutionary governments often quickly abridge their promises to legally preserve freedom of expression is a challenging and disconcerting inquiry. In an attempt to answer it, this article studied both the development and the aftermath of six revolutions from three centuries: the American Revolution of 1783, the French Revolution of 1789, the Russian Revolution of 1905, the Cuban Revolution of 1959, and the “Arab Spring” revolutions of 2011 in Egypt and Tunisia. In each of these uprisings, the revolutionaries demanded legal safeguards of freedom of expression from their government, and leaders promised this liberty if the revolution brought them to power or permitted them to remain in power. However, shortly after each of these revolutions concluded, the new government assuming control or the holdover government that vowed to reform quickly reversed course, instituting stringent measures that strictly controlled speech and expression in their nations.

After reviewing these revolutions and the immediate post-revolution restrictions on individual expression, certain common factors became apparent. To begin with, revolutions encourage leaders to make seemingly absolute promises regarding freedom of expression

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480. See, e.g., *supra* notes 190–194, 243–247, 263–264, 325–339, 363–371 and accompanying text.

481. See *supra* Part II.

that they either do not intend to keep or discover that they cannot keep within the day-to-day work of governing a nation. Upon assuming power or managing to retain power, post-revolutionary governments tend to fear the still-volatile national climate that produced this social upheaval in the first place. This apprehension often leads post-revolutionary leaders to dramatically restrict liberty of expression, reducing dissent and opposition among the citizenry and providing an appearance of unified support for the regime in power.

To legitimize these expression-chilling measures, and to gain acceptance or even support for these limitations from the public, post-revolutionary states employ a variety of strategies. Many post-revolutionary leaders convince citizens that abridging certain types of expression is necessary for the public's own security, allowing the government to easily identify the enemies of the people and thus keep the loyal, law-abiding population safe. In the aftermath of a period of violent unrest and upheaval, this rhetoric frequently strikes a particularly positive chord with individuals seeking safety and security after such a turbulent and unstable time.

Some leaders find success in playing upon the new nationalism that arises after a revolution supplants one regime with a new government, convincing people to allow limits on their personal expression for the "greater good" of uniting the nation. An overall lack of well-organized opposition forces to speak against the leaders in control following a revolution commonly encourages state-sponsored censorship, as the political faction in power does not receive enough of a push from their opponents to let dissenting voices be heard. Harsh penalties that post-revolutionary leaders commonly inflict upon people who violate the state's constraints on speech and expression strongly discourage citizens from defying these laws. To many people, the loss of freedom of expression does not outweigh the severity of the punishment that would likely result from disobeying the post-revolutionary state's restrictions.

Beyond examining post-revolutionary governments' strategies, however, another common factor illustrated in this article focuses on the sentiments of the people themselves. Freedom of expression is intangible and difficult to fully define. Thus, when it comes to making hard choices, personal liberties in this area evidently are not the highest priority for most individuals. Revolutionaries often clamor for freedom of expression, yet the post-revolutionary states studied here demonstrate that most people are unlikely to revolt over the issue of

speech and expression by itself. Other tangible day-to-day concerns understandably appear to be matters of greater focus for the majority of the populace, focusing their attention on issues that clearly and immediately affect their daily lives rather than the more subtle magnitude of speech and expression rights. Indeed, a significant number of individuals openly support certain governmental restrictions upon speech and expression, demonstrating the degree to which they prioritize other values and aspects of their lives above this particular freedom.

From this discussion emerges another equally troubling question: whether it is even possible for a post-revolutionary state to exist without breaking its vows to the people regarding freedom of expression. Most likely, no state could survive under the absolute degree of freedom of expression that many revolutionary leaders appear to promise. Even for relatively stable states that highly prize these liberties, some level of restriction upon speech and expression remains necessary to prevent complete chaos within the nation. In the still-unsteady aftermath of a revolution, a government's need to exercise some degree of control over the actions of its citizens becomes even more important to prevent the state's utter dissolution.

Because of this, a post-revolutionary government that did not heavily tread upon the speech and expression liberties of its citizens would need to be remarkably self-disciplined, far better at keeping its own powers in check than any of the post-revolutionary states studied here. Such a government would need to conquer its apprehensions of the populace that installed it in power in the first place, permitting them to express viewpoints and ideas that go against the government's views, or even against the government itself. Such a government would need to restrain itself from using the many instruments in its toolkit that could persuade many people that substantial state-imposed censorship was not only justified, but beneficial. Perhaps most importantly, such a government would need to convince the citizens that freedom of expression is a fundamental component of their lives, not something to shy away from in fear that it will weaken the nation and cause greater instability. Whether a post-revolutionary government could ever fulfill all of these criteria and remain in power is a question still awaiting an answer.

For now, suffice it to say that throughout the centuries, post-revolutionary governments have engaged in similar practices to quickly and effectively melt their promises of freedom of speech and

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expression. The balances between liberty and stability, and the consequences of each, underlie both the post-revolutionary governmental decisions to abridge this freedom and the subsequent reactions of citizens regarding these constraints. A deeper examination into the positive and negative outcomes of these acts will be beneficial in the future — not only to understand the dynamics of personal liberties in post-revolutionary states, but to improve the overall comprehension of the value of free speech and expression as a whole.