

Freedom as the Essential Basis for Communication Rights

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This chapter argues that no right can be exercised without freedom. Within this framework, I analyze the classic concept of freedom, which has served as the basis for the fight to secure rights for the press, book publishers, and individuals for the past 17 centuries. Freedom is what all human actions have had in common when people have claimed rights from the powerful, from the right to print without fear of censorship to communication rights as they appear in the Universal Declaration of Human Rights (UDHR) and as they have been studied by scholars.

There have been many authors based in the fields of law and politics, and even sociologists, who have analyzed and addressed the UDHR, from the points of view not only of human rights and the foundation of human beings' liberties and rights but also of their relationship with politics, culture, and ethics. These authors include, among others, Desantes, Glendon, Romain Parmentier, Oraa, Gomez Isa, and Gimbernat. Not surprisingly, the recent commemoration of the 70th anniversary of the declaration has made this important universal manifestation of human rights topical once more.

Since the beginning of their existence, humans have felt the need to express themselves and to communicate with other humans. For Aristotle, as Azurmendi (2015) highlighted in examining the remote antecedents of communication rights, politics is "society's founding activity," an idea that connects with the clear relationship between communication and community (in Spanish at least). People have always sought ways, whether physical, visual, or oral, to fulfill this innate need to form relationships. Through most of the long history of humanity, these relationships were created spontaneously, without restrictions or conditions, with the only difficulties being those imposed by the current state of media and technology at any given point in history. Primitive societies were not conscious of the concept of freedom to communicate, because they exercised that freedom naturally. This is what Desantes calls "the spontaneous freedom of the classical world" (Desantes Guanter 1977, p. 46).

These beginnings make sense because the need for freedom, as a basis for communication, is not perceived until freedom of expression or communication is restricted by an act of force for whatever physical, legal, or political reason. The right to communication has been termed *ius communicationis* by F. de Vitoria to frame it as a social right, as Corredoira and Sánchez Ferríz have pointed out.

Various studies on Francisco de Vitoria focus on his contributions to the promotion of human rights in the early sixteenth century. José María Desantes (Desantes Guanter 1999) considers him the first precursor of communication rights in his work *Francisco de Vitoria, precursor del derecho de la información* as does Ramón Fernández (2003) in *Los derechos Humanos. Antología*. De Vitoria did not write directly; his legal work *Lectiones* has been handed down to us from his students.

The Existence of Freedom Prior to Rights and States

From the moment in history when communication rights began to be restricted – I refer here to the first formulations of these rights, such as “the freedom to print” or “freedom of press” (Virginia Declaration of Rights of 1776) – a fight for unconditional freedom of expression began. In many cases, it would prove a difficult battle. During this long period, all political structures tended to limit the freedoms of their citizens, particularly in the area of information, in terms of both what could be said (speech) and what could be published (the press). This was done in the service of the ruling classes and was a product of their lack of understanding. They believed themselves to be the exclusive holders of these freedoms and to be the ones vested with the power to concede these freedoms – with limitations – on citizens. A clear example of this is seen in absolute monarchies in Europe. If we understand freedom to be, in the words of Castro Fariña, “the absence of barriers” (Castro Fariñas 1970, pp. 31–44) then absolute monarchs established a broad range of barriers to freedom of expression.

As the years passed and Western states began to form in the eighteenth and nineteenth centuries, it appeared that the situation would improve because positive declarations of rights appeared, and these promoted the freedom of citizens as a basic principle. During this period, constitutions made the effort to include freedom, albeit in general terms, as one of their basic principles. While the emergence of states promoted citizens’ freedoms in one sense, it also severely delayed the arrival of the era of human rights.

This reflects a crude reality. States, which conceded certain freedoms to citizens, limited those freedoms in pursuit of their own interests, and these limitations were not always legal or consistent with citizens’ rights. Up until the twentieth century, states ignored the idea that the concept of freedom, as a fundamental human attribute, clearly precedes the creation of political structures. Indeed, states thought that they were the first to grant freedom to people and, therefore, had the right to define and limit that freedom in a way that suited their political and social goals. And so, they codified and enshrined the concept of freedom into their laws and into the first constitutions.

This perception posed a challenge to individual rights because states understood freedom not as a reality existing prior to the creation of states – or, indeed, as something intrinsic to all human beings – but instead as an attribute created and established by the state. Not even Thomas Paine’s ideas in his work *The Rights of Man* (1791) had much impact at first, despite his great influence on the United States’ declaration of independence. Paine argued that the rights of man are innate and precede all else: “The Revolutions of America and France are a renovation of the natural order of things, a system of principles as universal as truth and the existence of man, and combining moral with political happiness and national prosperity.”

In the Spanish and Latin American contexts, Francisco de Vitoria is also considered a pioneer, as previously mentioned, when it comes to the communication rights that we enjoy now.¹ He asked the Spanish Crown for “just titles” (a version of innate rights) for the peoples of

¹ See the various studies on Francisco de Vitoria, who promoted human rights in the early sixteenth century. José María Desantes considers him the first precursor of communication rights in his work *Francisco de Vitoria, precursor del derecho de la información*, 1999, especially pp. 35–68. See also de Vitoria’s work published by Ramón Fernández in 2003, *Los derechos Humanos. Antología*, particularly pp. 242–243. De Vitoria did not write directly; his legal work *Lectiones* has been handed down to us from his students.

Spanish America at the beginning of the sixteenth century. When the New Laws of the Indies were promulgated in 1542, they drew on de Vitoria's views on human rights and policy.

This allowed the state to limit freedom when it felt that such freedom was not being exercised along lines that served the state's interests. The problem during this historical period is that the state, which conceived and defined freedom under specific circumstances, could limit that freedom until it no longer existed. What was the root cause of this? Put quite simply: the act of basing freedom on the state rather than on human beings.

This gave rise in subsequent centuries, principally the nineteenth and twentieth, to laws and even constitutions that, on paper, were clearly liberal but that in their daily implementation supported dictatorships in which the exercise of freedom was non-existent – for example, Sweden's 1991 law on freedom of expression, which is one of the four fundamental laws that comprise the country's constitution, or the Dutch reformed constitution of 2018. This illustrates the conservative concept of freedom subjugated to the political idea of order.

Clearly, this situation had negative consequences on the consolidation of all rights, including communication rights. The idea that human rights are a positive and complementary consequence of the exercise of human freedom is incorrect. Freedom *per se* is a way to exercise rights, and it neither precedes nor follows from rights. Rather, freedom is an attribute of rights. No right can be exercised without freedom. And there is an even more important idea at work: human rights, which allow humankind to fulfill its existential needs, precede the existence of states and are rooted in the human condition itself. Rights are innate to humans: they are born with a person and belong entirely to that person until the moment of their death.

From Freedom of Expression to Communication Rights

The true sense of freedom can be understood when we consider it as a form in which a right is exercised – in this case, communication rights and their three facets (seek, receive, and impart) as these are analyzed in this work. In this way, the exercise of liberty can be understood perfectly as a way to facilitate the development of human rights, since rights cannot be exercised without freedom. The two concepts represent two sides of the same coin, though there is a substantial difference between them. Freedoms, particularly public ones such as freedom of expression or freedom to join a union or political party, are innate to man, yet they are regulated by the state by virtue of its authority to establish the extent of the freedom defined in its laws and regulations. From this perspective, freedom is a concession from the state, which becomes more democratic when it concedes more freedom, but which always retains the possibility of limiting freedom in the name of the so-called public good in order to protect other assets. This is the case, for example, with official and judicial secrets as well as with regulation of telecommunications.

In contrast to freedom, human rights are not conceded by the state nor do they have their origins in the state. They fall under the authority of humankind and are innate to it; they are born together with the individual and accompany that individual throughout their life. The role of the state is to recognize human rights in this way and protect the ability of individuals to exercise those rights. The exercise of human rights requires freedom, which must be conceded by the state in sufficient measure to allow a meaningful exercise of those rights. This is the double task of the state: to recognize rights and to guarantee their free exercise.

If society struggled initially to achieve desired levels of freedom, the struggle today is to make states recognize the rights of their people and protect the exercise of those rights. It is, and will remain, a difficult struggle, just as it was difficult to win freedom. Without a doubt, the day will come when eventually all rights will be recognized everywhere in the world. Communication, particularly information and communication technologies, has a role to play in achieving this objective; it serves as a reference point for people lacking, completely or partially, the human rights that are innate to them.

Freedom of Expression Lies at the Foundation of Communication Rights

Understanding this idea requires an understanding of the true concept of freedom; otherwise we will find ourselves with so-called frustrated freedom. Freedom, historically the fruit of constitutional revolutionary conflict, was granted by the state, which as lord and master of that concession also established the mechanisms of its development. In the event that the state does not follow those mechanisms, it assumes the authority to limit or even suspend that freedom. Freedom in this case is “given” or “granted” and does not have the status of a citizen’s right. Rather, it is a prerogative of the state.

Under these circumstances, which are extreme but unfortunately common, freedom can become illusory or at least uncertain, regardless of how explicitly it is enshrined in a constitution. The cause of this situation – and, paradoxically, the solution – is that humans cannot be the victim of a continuous fraud. As a result, people tend to rebel against a lack of freedom. People’s yearning for freedom, which is real, makes them fight constantly, since, in the words of Desantes (Desntes Guanter 1974, p. 28):

The rights of people to achieve their existential aims are equivalent to the aims themselves, which precede the state and are rooted more deeply than the state.... [Similar to] the condition of being attributable to human personality ... freedom can be saved only when it considers itself to be what it really is: the emanation of a right, or one of the forms of exercising a right.

This is the true meaning of freedom, which is constituted as the essential foundation for exercising any right. But freedom is an attribute, not a foundation. The foundation is the right, and direct exercise of a right requires freedom. This clearly explains why the fight for freedom has been at the core of history and how it has been possible to obtain the communication rights. Thus, since 1948 we have not spoken of a freedom of expression arising out of the will of the state, but rather of a fundamental human right that exists in people purely because of their existence. This human right is enshrined in Article 19 of the UDHR.

The Long and Difficult Road to Communication Rights

On December 10, 1948, over 70 years ago, the UDHR was approved in Paris under the auspices of the United Nations (UN). It is no exaggeration to consider this date epic in the history of human beings because it ended an extremely long stage of widespread fighting and conflict that initially had simple freedom as its goal but later sought the state’s recognition of individual rights. This date marked a “before” and “after” in the history of humankind and its consolidation as a holder of natural rights (see Suksi et al. 2015).

The UDHR ended a process that, if we restrict ourselves only to the most recent centuries, began in 1628 when the *Magna Carta Libertatum* was written in English, or even in 1215, when the Magna Carta was approved by King John of England (Sánchez Ferriz and Corredoira 2017). The Magna Carta was followed by the Petition of Right (1628). This petition is considered by many historians² as the first great political declaration of rights. Its 11 articles aimed to guarantee not only principles of political freedom but also those of individual freedoms. For example, it forbids arbitrary detention and extraordinary courts, and it guarantees the right of the accused to due process and to respect their rights as these are recognized in the kingdom’s laws and statutes.

Here, it is also appropriate to mention, for its indirect influence, the implementation of the Habeas Corpus Act (1679) for accused and imprisoned individuals, which aimed to protect the individual, prevent their arbitrary transfer, and guarantee compensation for damages

²See, for example, Suski et al. (2015).

arising from illegal transgressions of their rights. This document made transgressors legally responsible for their actions and established fines and penalties.

The Petition of Right lasted barely two years. Then in 1689, the Bill of Rights was signed which, for the first time in history, expressed the principle that the king's authority does not have the force of law and that the law is above the king. It also recognized the public's right to petition and the right to vote freely, and it established judicial guarantees and the protection of public freedoms.

This declaration was followed by others in Europe and North America. In North America came the Virginia Declaration (1776), the US Declaration of Independence (1776), and the US Constitution (1787). The Virginia Declaration comprises 16 articles that establish a series of rights that, because of their content and language, seem to be precursors of what we understand today as human rights. The declaration considers individual rights to be natural and inalienable – a historical first.

The Virginia Declaration establishes, for example, separation of powers (principally executive and legislative powers); it affirms the equality of men; it proclaims, for the first time, the primacy of civilian power over military power; and it establishes the right to justice and freedom of religion. Its Article 12 affirms that “freedom of the press is one of the great bulwarks of freedom and cannot be restrained by a despotic government.”

This is the first great declaration related to freedom of communication, in this case, freedom of the press.

Jefferson drew heavily from the Virginia Declaration to draft the US Declaration of Independence, and the content of the Virginia Declaration was reaffirmed by the US Constitution, together with its amendments. From the perspective of freedom of expression, the most important amendment is the first one. It was proposed on September 25, 1789, and enacted on December 13, 1791. The First Amendment establishes that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In the European context, it is necessary to mention the Declaration of the Rights of Man and of the Citizen (1789), published in France, where Jefferson was serving as US ambassador at the time. This declaration clearly paved the way for the concept of fundamental rights of the citizen, and it enumerates which rights should be considered essential. A good example is the first article, which affirms that “men are born and remain free and with equal rights” – a wording quite similar to the first article of the UDHR – and that men are “endowed with reason and conscience, [and] should behave fraternally towards one another.”

The French declaration continues by speaking of political rights (national sovereignty, representative government, primacy of the law, and separation of powers) as well as of individual rights (resistance to oppression, presumption of innocence, and the right to property). Two articles on individual rights stand out from the perspective of information law and ethics. Article 10 states that “no one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law.” The phrase “no one may be disturbed” is echoed by the UDHR's wording of “no one shall be subjected to arbitrary interference.” Article 11 states that:

The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law.

In the twentieth century, in the wake of the trauma of World War II, the UN Declaration (1942) was a notable achievement. In this document, 26 states declared themselves unified in conflict

against the Axis powers and committed to remaining united after the conflict in order to found an international organization whose mission would be to promote peace in the world. This agreement led to the UN Charter (1945), which created the conditions for the UDHR (1948), the final step in the long journey to establishing the primacy of human rights in the face of tyranny and abuse of the law. This was the culmination of a long process of searching for and formulating fundamental rights that would allow society to improve human dignity following all the violence of the twentieth century, primarily because of the two world wars that occurred between 1914 and 1945. The fundamental idea behind the UDHR was to establish major human rights that would impede the violations of human dignity witnessed in the twentieth century.

This is the meaning of the UDHR, which brings together the principal fundamental rights that, at the time, constituted the essence of human dignity. The declaration had a clear ethical force, even if it was not legally binding. The importance of its contents and the moral force of the rights declared therein led it to influence legislation adopted by the UN's member states. This legislation may have differed somewhat from state to state, but its purpose in all cases was to promote human rights within each country.

One of those rights, which was doubtless quite important given the rapid development of media at the time, was the right to freedom of expression, which, until that point, had been the focus of the fight for the right to freely express opinions and ideas. It was time – and this is also the perception from the declaration – to move from fighting for freedom of expression, as people had in centuries past, toward turning that freedom into a fundamental right. The moment was propitious to grant expression free of government interference as an essential part of society, the status of fundamental right. In this way, the universal right to freedom of expression emerged.

Article 19 of the declaration states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” This article establishes the basis for communication rights, the right to communication for all citizens of the world through universality of subject, medium, content, and geographic location. The development of this right was a significant achievement. It amounted to a qualitative leap that allowed the creation of communication rights as a human right that should be respected and protected by the state.

This leap would gradually become more effective as national legislatures incorporated the UDHR's principles into their own laws and constitutions. Indeed, the goal of the declaration was to serve as the ethical and legal source for the development of national and supranational legal instruments that would make communication rights fundamental.

International Agreements on Human Rights: The International Covenant on Civil and Political Rights

The UDHR is one of several universal declarations and international agreements that aim to strengthen the existence of human rights in various fields of endeavor. Just within the realm of communication, which is the focus of this volume, two agreements followed the UDHR: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These declarations were adopted by the UN General Assembly in its Resolution 2200 on December 16, 1966, when the agreements were opened for ratification by member states. The agreements ultimately entered into force on March 23, 1976.

One of the disadvantages of the UDHR is its nonbinding nature in relation to the national legislation of member states. From the start, it was more an ethical declaration; it was important, but did not have legal weight because it could not be enforced. The Human Rights

Committee, as Subedi (2017) points out, has a certain moral authority, but it is not a guarantor. Following the first announcement of the UDHR, many set about translating its contents into a unified international treaty in order to give it full legal backing. This would not be achieved until 18 years later, with the approval of the International Covenant on Civil and Political Rights in 1966.

Initially, the idea was to create a single treaty that reflected the unitary, indivisible character of the human rights enumerated in the UDHR. However, confrontations among the UN member states, which were divided into classical capitalist and Marxist camps, necessitated the splitting of the rights into two covenants in 1948. The first agreement, which was ratified by a larger number of UN member states, deals with civil and political rights and establishes oversight and monitoring mechanisms for ensuring its implementation. The second agreement, covering economic and social rights, is more general and does not stipulate adequate monitoring mechanisms.

Perhaps the most important aspect of these two covenants is that they are legally binding on the states that have ratified them. Therefore, they represent a transition from ethical declarations of human rights to legal definitions of them. For this reason, these covenants have an importance that is similar to or even greater than that of the UDHR in many parts of the world, particularly in English-speaking countries. These two covenants, together with their supporting protocols and the UDHR, make up what is termed the International Charter of Human Rights.

It is instructive to examine the first of the agreements, the Covenant on Civil and Political Rights, whose importance is expressed in its Preamble. (The two covenants' preambles are the same, reflecting the desire for unity between the two agreements.) The third paragraph recognizes that:

in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Article 2 clearly establishes the legally binding nature of the covenant's contents:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Two articles of this covenant are fundamental from the perspective of information and provide a detailed, extensive endorsement of Article 19 of the UDHR. Article 18 of the covenant establishes:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Though this article refers fundamentally to religion, I quote it because it describes freedom of thought as a right of all people and as an essential part of the freedom of opinion and of the freedom to manifest the beliefs mentioned in the third point. It is therefore clearly related to freedom of expression.

Article 19 declares:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in para. 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a) For respect of the rights or reputations of others;
 - b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Even without detailed interpretation of the article's contents, the similarity of these provisions, especially the first two points, to Article 19 of the UDHR is striking. Perhaps the great innovation in both the UHDR's Article 19, and that of the covenant, is that their third paragraphs clearly establish the responsibility related to the exercise of communication rights. Such responsibility already appeared in the Declaration of the Rights of Man and of the Citizen (1789), though, there, it was not identified as a communication right. The third paragraph of Article 19 creates a responsibility for communication rights, but on many occasions, it has not been truly understood, since it has been used as a basis for limiting that right.

With the enactment of these two covenants, particularly the one on civil and political rights, the contents of the UDHR were reaffirmed. To be sure, other covenants, declarations, and resolutions have contributed to human rights, yet the passage of these two covenants in particular marks the final and definitive step in the establishment and defense of human rights related to information.

Other Declarations to Consider

In the previous sections, I have discussed the principal declarations of human rights at a global level. We must remember that one of the objectives of the UDHR was to serve as a basis for different supranational organizations and, later, individual countries to reaffirm its contents within national borders. Indeed, a series of declarations followed that reaffirmed the defense of human rights in different geographic areas of the world, with consequences for communication.

The relevant declaration in Europe, for example, is the Convention for the Protection of Human Rights and Fundamental Freedoms, approved in November 1950. Based on the principles of the UDHR, Article 10 of this convention reaffirms the principal ideas of Article 19 of the UDHR, in nearly identical words:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial

integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In my opinion, two years after the UDHR was approved, in which no restriction was contemplated, this European convention, together with the reproduction of the content of Article 19 of the 1948 declaration, initiated the promulgation of a series of restrictions on communication rights under legal cover.

Another important statement was the International Covenant on Civil and Political Rights of 1966, which, in Abad's opinion (2015, pp. 58–59), made it possible to correct the “shortcomings over the regulation of communication rights in the UHDR.” For this author, this document's major contribution is its establishment in its Article 19 of limits on the exercise of UHDR Article 19 through its “emphasizing that the exercise of the right provided for in Article 2 (practically identical to UHDR Art. 19) entails special duties and responsibilities ... and may be subject to certain restrictions that must be expressly set by law.”

In Latin America, the most important declaration is the American Convention on Human Rights, which is also called the Pact of San José, since it was signed in San José, Costa Rica, in 1969. It entered into force on July 18, 1978. Article 13 refers to freedom of thought and expression in these terms:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a) respect for the rights or reputations of others; or
 - b) the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of para. 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

For African nations, the document of reference is the African Charter on Human and People's Rights. It was written by a group of experts appointed by the Organization of African Unity (OAU). In 1981, the draft was approved unanimously at the 18th Assembly of the OAS, and it entered into force in 1986. Articles 8 to 11 contain provisions related to freedom of expression (freedom of religion, assembly, and association), with Article 9 recognizing an individual right to share information and to express and disseminate opinions “within the law.”

Among Arab-speaking countries, an Arab Charter on Human Rights was agreed at the League of Arab States on September 15, 1994, but no member state ratified it. The charter was updated in 2004 and entered into force in 2008, when seven members of the League of Arab States ratified it. Article 26 affirms: “Everyone has a guaranteed right to freedom of belief, thought and opinion.”

Finally, one must say that human rights law and human rights theory are very much alive and continue to develop around the world. Authors like Nussbaum, centering their theories around human dignity and the universality of what makes us “truly human” (2003, p. 41), propose that governments should ensure that people develop essential human capabilities that allow us to use our minds, imaginations, and thoughts “in ways protected by guarantees of freedom of expression” (Nussbaum 2003, p. 41) and that allow us to “participate effectively in political choices that govern one’s life” (Nussbaum 2003, p. 42). For this, communication rights must not only be guaranteed but actively fostered by states.

Conclusion: The UDHR as the Basis for Modern Communication Rights

This chapter began by analyzing the concept of freedom as a basis and foundation for human activity, particularly in the field of communication and, more precisely, information. With the struggle to ensure that states recognized rights and guaranteed the freedom to exercise them rather than simply granting limited rights to citizens, communication ceased to be regarded simply as an attribute of freedom and instead became the object of bona fide communication rights. Humankind’s tenacity gave rise to successive and ever more complete declarations of the essential rights that make one human.

The UDHR invoked freedom as a natural support for the right to information. This chapter concludes with a focus on that document as a foundation for communication rights, as well as the foundation for a set of legal and ethical norms that led to the development of what is conceptualized here as subject, object, and contents. This was an essential step forward in the characterization of communication as a right.

As pointed out, the UDHR is a text that has ethical authority but no legal support or guarantees of legal implementation. Some might have thought this would pose a challenge to the formulation of communication rights. Nothing could be further from the truth, since the declaration has contributed to the progressive constitutionalization of this right in countries with a Napoleonic legal tradition, and it has served as a legal precedent to guide legal decisions about communication issues in countries with a common law tradition.

Analysis of the legal-informational communication reality in a broad range of countries, based on their constitutions and legislation, indicates that the internationality of communication rights is alive and well. Little by little, without hurry though also without pause, the image of a universal right to information is arising through the unified force of diverse national laws. This is a profound development of the guidelines laid down in the UDHR in 1948. It is natural to find opposition – even unconscious resistance – to the gradual global acceptance of the principles laid down in Article 19 of the UDHR. Such resistance can take on forms that even violate the contents of the article, but modern reality, technological advances, and the development of new communication systems are creating an unstoppable march toward universal laws that ensure the right to information.

This trajectory also reflects the importance of universal public opinion regarding the achievement of international communication rights in the sense that community ideas are internationally valid and can be shared among all peoples. Globalization strengthens the possibilities for universality and will undoubtedly contribute to universal communication rights. So do different approaches to human rights that link them to human capabilities that are, in turn, made universal by identifying the essentials of human dignity, of what makes us “truly human.”

This is reflected in the successive international declarations, such as the European Convention on Human Rights of 1950, the International Covenant on Civil and Political Rights of 1966,

the Pact of Costa Rica of 1969, the African Charter on Human and Peoples' Rights of 1986, and the Arab Charter of Human Rights of 2004. These documents refer to communication in practically the same terms as Article 19 of the UDHR. This highlights the importance of the UDHR in ensuring that countries around the world acknowledge the existence and importance of communication rights and other human rights and the aspiration that societies and political systems continue strengthening their commitment to the protection of these rights by respecting and implementing international and regional human rights treaties.

References

- Abad, L. (2015). El derecho a la información en los textos universales (estudio del artículo 19 de la DUDH). In: *Derecho de la Información. El ejercicio del derecho a la información y su jurisprudencia* (ed. I. Bel and L. Corredoira), 49–68. Madrid: Centro de Estudios Políticos y Constitucionales.
- Azurmendi, A. (2015). El proceso de la configuración del derecho y la Información. In: *Derecho de la Información. El ejercicio del derecho a la información y su jurisprudencia* (ed. I. Bel and L. Corredoira), 31–47. Madrid: Centro de Estudios Políticos y Constitucionales.
- Castro Fariñas, J.A. (1970). *De la libertad de prensa*. Madrid: Fragua.
- Desantes Guanter, J.M. (1974). *La información como derecho*. Madrid: Editora Nacional.
- Desantes Guanter, J.M. (1977). *Fundamentos del derecho de la información*. Madrid: Fondo editorial Cajas de Ahorros.
- Desantes Guanter, J.M. (1999). *Francisco de Vitoria, precursor del derecho de la información*. Madrid: Imatique.
- Fernández, R. (ed.) (2003). *Los derechos Humanos. Antología de Francisco de Vitoria*. Salamanca: Editorial San Esteban.
- Nussbaum, M. (2003). Capabilities as fundamental entitlements: Sen and social justice. *Feminist Economics* 9 (2–3): 33–59.
- Paine, T. (1791). *The Rights of Man*. London: J. Johnson.
- Sánchez Ferriz, R. and Corredoira, L. (2017). La compleja configuración de un derecho-libertad poliédrico, el Derecho a la información.: Referencias históricas. *Revista de derecho político* 99: 11–48.
- Subedi, S. (2017). *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights*. London: Routledge.
- Suksi, M., Agapiou-Josephides, K., Lehnert, J.-P. et al. (eds.) (2015). *First Fundamental Rights Documents in Europe*. Cambridge, UK: Intersentia.