

# **Insult Laws:**

**An Insult to Press Freedom**

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*The World Press Freedom Committee, established in 1976, includes 37 journalistic organizations on five continents and is dedicated to news free of government interference.*

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## INSULT LAWS: AN INSULT TO PRESS FREEDOM

Every farmer, every gardener, every householder knows that sometimes nothing seems harder to get rid of than an unwanted weed tree. No matter what you do after chopping it down, it keeps coming back with fresh new shoots whose roots refuse to die.

Some harmful old legal traditions are like that, and they have been sending out vigorous branches in the press freedom garden. One is the resurgent and repugnant idea of a so-called New World Information and Communication Order, in which governments would regulate the media.

Another weed is a legal species known generally as insult laws. These laws are perhaps as old as the first ancient lawgivers, and spring from the concept of the divine right of kings – that the king can do no wrong. They made it a hanging or at least a jailing offense to insult the king, his officials and institutions, or the symbols of his authority. Before the age of revolutions and modern republics, the offense was based on the concept of *lese majeste*, which meant an offense to the dignity of the sovereign.

After most chiefs of state became presidents, the primary form of this crime became known as “insult to the president of the republic,” whose classic form was set in the French press law of 1881. It remains the basic press legislation in France today. The 1881 law also carries serious penalties for insulting foreign chiefs of state, foreign ministers or ambassadors of friendly countries, and official bodies like parliament, the judiciary and the armed forces.

The French law has many imitators today. Similar provisions are on the books in Austria, Germany, the Netherlands, Norway and Spain. This is not a serious problem in older democracies, where it is recognized that such provisions are incompatible with freedom of expression. The last time it was used in France was under President Charles de Gaulle, including once in the mid-sixties when a spectator was arrested for crying out “hoo hoo” (a mildly insulting sound in French) as the president drove up the Champs Elysees to review the troops on Bastille Day.

The majestic De Gaulle’s successors as president realized that a law that might be appropriate when the president was the figurehead symbol of national sovereignty – not the nation’s central political actor – is not compatible with democratic practice.

So the French law stayed on the books but went into deliberate disuse, as is the case elsewhere in democratic Europe. The trouble is that a seemingly harmless legal anachronism on the statute books in a working democracy can and does serve as a powerful negative example to rulers of post-colonial and post-Communist states. They have rushed to enact, and to use, such insult laws, justifying them on the grounds that they exist in the West. These modern insult laws have become an active threat to press freedom.

In Africa’s Ivory Coast, three journalists were jailed for insulting their president. This fall in Cameroon, our good friend Pius Njawa, editor and publisher of Yaounde’s *The Messenger*, was sentenced to six months in prison for alleged “insult to the President.” One of his writers was sentenced to a year in prison. They are appealing. Their offense: running a satirical piece critical of the president’s plan to stack a new Senate with his own appointees.

The French law of 1881 has its equivalents almost everywhere in French-speaking sub-Saharan Africa. Only in Senegal is it safe to publish a caricature of the chief of state without risk of imprisonment.

In Zambia, for example, Fred M’membe, editor of Lusaka’s bi-weekly newspaper *The Post*, faced charges of criminal libel after quoting a former minister as saying in court that the president was “a twit.”

There once was a law in South Africa, protecting the president from being brought into disrepute. But it was dropped in the late 1980s. This just goes to show that such bad laws are not set in stone and can be gotten rid of with relatively little fuss, if there is a will to do so.

## **Egyptian Insult Law**

For example, look at Egypt, where at least 99 journalists, writers and artists were prosecuted after the Egyptian Peoples Assembly adopted a restrictive press law in May 1995. That law provided for detention of anyone who published material “insulting” to the president, parliament, the army, courts or public agencies.

The Assembly, under pressure from Egyptian and foreign journalists, repealed the odious law in June 1996. But there is still work to do. Just two months after the repeal, the Egyptian Information Ministry confiscated 10,000 copies of the Arab-language monthly *Al Tadamum*, because of an editorial suggesting that most Arab heads of state should undergo mental tests for cooperating with Israel and the United States.

There are too many other places in the world where such insult laws are under active consideration or actual use, notably in Eastern Europe. Perhaps the most ironic example is in the Czech Republic under the presidency of the region’s best-known democrat, Vaclav Havel. Nobody thinks that Havel would use, let alone misuse the law. But it is nonetheless disturbing that he failed to abolish an insult law inherited from the old Kingdom of Bohemia.

The present Czech law is an amended version of a 1961 Communist-era statute meting out penalties for speaking against the state and its representatives. It now provides that anyone who defames the president of the republic in his public capacity is liable for up to two years in jail. Havel has refused to let anyone be prosecuted under the law.

But there is no guarantee that his successor will be so lenient. His next-door neighbor in Slovakia, the Czech Republic’s former partner in nationhood, actively pursues enactment of even broader insult laws. Prime Minister Vladimir Meciar’s government, which has a record of harassing news media it doesn’t control, very recently placed under parliamentary consideration a draft press law that bans publication of anything considered “offensive to Slovak statehood, state symbols, nation, nationality or other minority or social group.” And this in a nation that has been admitted to the Council of Europe, the European body that certifies that a state is a working democracy.

Another new Council member, Croatia, has even invented a new form of insult crime, “political pornography.”

Furthermore, journalists in Croatia can be prosecuted for publishing vaguely defined “state secrets” or for offending state officials. These “crimes” carry a maximum sentence of three years in jail.

## **Former Soviet Republic Insult Laws**

A number of post-Soviet republics have also adopted wide-ranging insult laws, which they have used freely to imprison journalists, critics and political opponents.

Tartarstan’s case is typical. A new law there prohibits insulting “remarks” to the president. Designers say the law is needed to enforce the constitutional protection of the “honor and dignity of the president.” But there is no objective test of what constitutes an insult. We can only hope that international protests will inspire the repeal of this bad law.

A good instance of how the Western example of insult is misused was the statement of the chief public prosecutor of Kazakhstan to representatives of free press groups attending the 1992 UNESCO seminar in Alma Ata on promoting an independent press. He defended the imprisonment of a prominent writer-historian for allegedly insulting Kazakh President Nursultan Nazarbayev in press articles. The prosecutor noted that the Kazakh law was not different in kind from French and German laws. He alleged that the offender had called the president a “goat,” apparently an insult worse for a Kazakh than a French “hoo hoo.” The jailed commentator’s friends swore that he had never written any such thing, although they could not, of course, swear that he had never said it in private conversation. At least the French law requires that an insult be made in public to be actionable.

The Kazakh writer was released after a decent interval following the Alma Ata seminar. But others have been jailed since for alleged insults to the Kazakh president.

The four other former Soviet republics of Central Asia also have and use such insult laws to protect their presidents, including the president of Khirghizstan, who has gone out of his way to portray himself as a model democrat. A Khirghiz court early this year convicted an editor of defaming the chief of state and later barred her from writing for a year. This summer, another journalist was convicted of libeling President Akayev and sentenced to two years in a penal colony after having spent two months in solitary confinement.

Russia itself has no insult provisions in its 1991 Yeltsin press law, although that law does follow the restrictive pattern of the 1881 French press law in another way: The first article establishes the principle of press freedom except for certain limitations. This is then followed by several of articles taking away bits of that freedom.

### **French Free Press Exceptions**

That approach comes straight from the French Revolution's seminal human rights document, a major source of French legal prestige – the Declaration of the Rights of Man and of the Citizen of 1789. It says in its Article 11, "Free communication of thoughts and of opinions is one of man's most precious rights; any citizen may therefore speak, write, or publish freely, except that he must answer for the abuse of that freedom in the circumstances determined by law."

The "except" clause is the fundamental difference between the traditional American "thou-shalt-not" approach of the First Amendment to the U.S. Constitution and the European Continental approach. The First Amendment was written just two years after the Declaration of the Rights of Man. It says:

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.

There are no exceptions.

Likewise, the 1948 Universal Declaration of Human Rights' Article 19, which some call the First Amendment of the World, 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.

In 18th Century France, the new freedoms of the Revolution soon gave way, first to the Terror of Robespierre, then to the authoritarian rule of Emperor Napoleon, who carried the Declaration of the Rights of Man in his conquering army's knapsacks across Europe. Its Article 11 made it possible for him to control the press in detail without having to change a word of the Revolution's fundamental press freedom principles. Almost immediately upon seizing power in 1800, he decreed that 60 Paris newspapers considered "tools in the hands of the enemies of the Republic" should be banned, that no new ones should be allowed and that any other papers would immediately be forbidden if they printed articles "contrary to respect for the social pact, to the sovereignty of the people, or to the glory of the armies, or that publish invectives against governments and nations friendly to or allied with the Republic."

### **Bad Habits Die Hard**

Lenin needed no better example. The Soviet-era offense of "slander of the Socialist order," worth a standard 15 years in the Gulag, was abolished under Gorbachev's perestroika. But bad habits die hard. Despite perestroika, the producer of "Kukly," the Russian version of Britain's satirical televised political puppet show, "Spitting Image," was recently charged by the state prosecutor with "insulting the honor

and dignity” of Boris Yeltsin and other government leaders over NTV, the independent Moscow television station.

This Russian insult law is a general criminal law charge, with penalties of up to two years’ forced labor. The functional equivalent of libel – a civil, not criminal proceeding in most Western countries – this “insult to honor and dignity” offense is theoretically a charge that any citizen may ask the Russian state prosecutor to bring. Such defamation is at least informally considered by the courts to be “aggravated” if made against a high official, Russian lawyers report.

The charges against the Kukly producer were eventually dropped. But other officials have won cases involving “insults to their dignity,” notably Defense Minister Pavel Grachev against the largest-circulation Moscow daily, *Moskovsky Komsomolets*, for calling him “Pasha Mercedes,” implying both that he was more interested in new cars than his official duties and that his behavior was reminiscent of the local mafiosi. The offending journalist got a one-year suspended sentence.

### **Latin American Insult Laws**

There are insult laws throughout Latin America, as well. They go under the label of “desacato,” translatable as “contempt” or “disrespect,” and are on the books in 13 countries (Bolivia, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Paraguay, Peru, Uruguay and Venezuela).

But Latin America may offer the best early hope for a repeal movement, given the momentum created by abrogation of an Argentine insult law in 1994. The law was abolished as part of an out-of-court settlement in response to an advisory opinion by the Inter-American Commission on Human Rights in the case of Horacio Verbitsky, a prominent political journalist. His conviction on desacato charges involving the minister of the Supreme Court had been upheld on appeal by the Argentine Supreme Court. But the Inter-American Commission maintained that the law violated the freedom of expression provision of the American Human Rights Convention.

The Inter-American Commission said among other things:

The use of desacato laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic society that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. . . . Contrary to the rationale underlying desacato laws, in democratic societies, political and public figures must be more, not less, open to public scrutiny and criticism. The open and wide-ranging public debate which is at the core of democratic society necessarily involves those persons who are involved in devising and implementing public policy.

A recent Strasbourg conference on Freedom of Expression, co-sponsored by the Friedrich Naumann Foundation and the Center for Justice and International Law, concluded in a statement by conference participants that “so-called ‘insult’ laws protecting public officials and institutions, as well as public symbols or nationhood are unjustifiable in a democratic society.”

Democratic leaders get as upset over unflattering press reports as dictators do. They don’t refrain from blaming the press for their political problems. So, it may be no accident at all that Western leaders who no longer actually use insult laws have not moved to abolish them altogether. They may want to reserve the right to invoke them.

In France, Valéry Giscard d’Estaing said upon taking office as president in 1974 that he would never use the 1881 law to protect himself. Francois Mitterrand went to great pains to make known that if he did not resort to the law, it was out of choice, proving his tolerance of criticism. But neither president acted on calls to repeal the law. It remains a clearly implied threat if the press should overstep some unstated line.

Everyone, even a president, has a legitimate right to protect his reputation if it is unjustly attacked. But no special laws are needed. For that purpose, there are general laws against libel, slander and defamation. Institutions, nations and their symbols need no special protection.

### **Repeal Insult Laws**

The time has come to root out noxious weed trees from the new forest of democratic laws sprouting all over the world. We who believe in the importance of press freedom to successful democracy must mount a global campaign to repeal these insult laws where they exist, and to eliminate the temptation of political leaders who are considering them.

Such laws are signs of weakness. Governments that resort to them fear their press and publics and want to suppress truly free expression.

It is up to those of us who count ourselves champions of free expression to expose the threat posed by these insult laws. We must object, and vigorously, whenever an insult law is adopted, anywhere in the world. We must repeal all insult laws as soon as possible. The reasons are clear:

- Insult laws are a violation of Article 19 of the United Nations Universal Declaration of Human Rights, which holds all signatories to its principle of free expression.
- Enforcement of these laws prevents the media from criticizing government action and leads to self-censorship. Clearly, there can be no “freedom to hold opinions without interference” if the jailer is looking for critics of the regime.
- Statistics show that economic development is retarded where information is suppressed.

The World Press Freedom Committee, with a coordinating committee of other press freedom groups, has successfully waged many press freedom battles against seemingly overwhelming odds.

Now, our organization and all likeminded groups around the world need to mobilize our forces against this renewed threat.

We need to stop merely hacking at the constantly reappearing branches of these weed trees and start on the harder but longer-lasting work of rooting them out.

We need to see to it that these insult laws are finally recognized for what they really are – an insult to democracy, an insult to human rights and, for us, a special insult to press freedom.

## Appendix

PRESS RELEASE

15 OCTOBER 1996  
FOR IMMEDIATE RELEASE

CAPE TOWN, South Africa -- A leading press freedom advocate today called for repeal of "insult laws," legislation designed to protect public officials from scrutiny and criticism by news media.

"Such laws are signs of weakness. Governments that resort to them fear their press and publics and want to suppress truly free expression," James H. Ottaway, Jr. said in a statement to the Commonwealth Press Union here. It was delivered for Ottaway by Lord McGregor of Durris, Chairman of Reuter news agency trustees.

Ottaway, senior vice president of Dow Jones & Co., and chairman of Ottaway Newspapers, is chairman of the World Press Freedom Committee. The statement was co-authored by WPFC General Counsel Leonard H. Marks.

A number of countries, including several considered democracies maintain insult laws, which are throwbacks to the ancient concept of the "divine right of kings."

Ottaway said archaic insult laws are rarely enforced in free countries like France, Germany and the Netherlands, but their very existence provides justification for adoption elsewhere by tyrannical regimes.

"The trouble is that a seemingly harmless legal anachronism on the statute books in a working democracy can and does serve as a powerful negative example to rulers of post-colonial post-Communist states," Ottaway said.

In French speaking sub-Saharan Africa, Ottaway said, Senegal is the only country where it is safe to publish a caricature of a chief of state.

Insult laws in 13 Latin American nations, in Slovakia, Croatia, the Czech Republic, Russia and several other former Soviet Republics, stifle open examination and discussion of leadership in these nations, Ottaway said.

"Everyone, even a president, has a legitimate right to protect his reputation if it is unjustly attacked," he said. "But no special laws are needed. For that purpose, there are general laws against libel, slander and defamation. Institutions, nations and their symbols should need no special protection."

Ottaway called on press freedom organizations to "mount a global campaign" to repeal insult laws where they exist and to discourage their adoption in countries where they are under consideration.

"We need to see to it that these insult laws are finally recognized for what they really are," he said. "An insult to democracy, and insult to human rights and, for us, a special insult to press freedom."

The WPFC, based in Reston, Va., is a leading global press freedom monitor joining 37 affiliated journalistic organizations on five continents, including the Commonwealth Press Union. In addition to its monitoring and advocacy work, the WPFC has completed more than 150 projects designed to assist independent news media in Africa, Asia, Latin America, the Caribbean and Central and Eastern Europe.

The Commonwealth Press Union includes leaders of the newspaper industry in Commonwealth countries around the world.