It has been a long time since Thomas Carlyle described the power of the press as ‘the fourth estate’ in 1841. He elaborated that ‘there were three estates in Parliament; but, in the Reporters’ Gallery yonder, there sat a fourth estate more important far than they all. It is not a figure of speech, or a witty saying; it is a literal fact.’ Indeed, faith in the press as the guardian of truth, the watchdog of the public, the foundation of democracy – in brief, the fourth estate – lies at the heart of the liberal imagination of the western democracies. Liberal theorists have argued that the existence of an unfettered and independent press within each nation is essential for democracy, by contributing to the right of freedom of expression, thought and conscience; strengthening the responsiveness and accountability of governments to all citizens; and providing a pluralist platform and channel of political expression for a multiplicity of groups and interests. Since Carlyle, the ‘fourth estate’ has traditionally been regarded as one of the classic checks and balances in the division of powers, or as Thomas Jefferson said, ‘Where the press is free and every man able to read, all is safe.’ Homage is paid to this dream in virtually all Western States’ constitutions, as they contain provisions respecting rights to freedom of speech and the freedom

* The manuscript for this text was finalised in late 2014. Only minor changes have been incorporated since that time.
1 Heroes and Hero-Worship (1840).
2 See, for instance, A Sen, Development as Freedom (1999), exemplifying this perspective by the famous argument that the free press encourages government responsiveness to public concerns by highlighting cases of famine and natural disasters; he observes ‘... in the terrible history of famines in the world, no substantial famine has ever occurred in any independent and democratic country with a free press.’ Cf A Sen, Democracy as a Universal Value (1999) 10 Journal of Democracy 3.
3 R Kocher, Bloodhounds or Missionaries: Role Definitions of German and British Journalists (1986) 1 European Journal of Communication 43 ff.
of the media.\textsuperscript{5} The rights granted by supranational conventions serve the same intentions. The guarantee of freedom of expression is recognised as a basic human right in the Universal Declaration of Human Rights adopted by the UN in 1948 (UDHR)\textsuperscript{6} and – most important to our European perspective – in the European Convention on Human Rights (ECHR). As is well known, rights enshrined in the realm of public international law did not take any meaningful shape until the Nuremberg trials after the Second World War, as it was previously assumed that public international law affected states only and did not permit intervention in the internal affairs of states, such that governments could refuse such rights to their citizens as they pleased. However, by 1945 it became clear that this had to change, as Nazi actions and ideology had gone without serious challenge in Germany in the thirties because of Hitler’s crackdown on dissenting publishers and journalists after the Reichstag fire. Due to the Soviet Union abstaining from the vote on the UDHR, the declaration never reached the stage where individuals’ rights became actionable. At this point, the political response of the Western European States is historically important: the ECHR was drawn up as a regional equivalent of the UDHR. It borrowed almost word for word from art 19 UDHR to construct art 10 (1) ECHR:

Everyone has the right to freedom of expression. This right shall include to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

\textsuperscript{3} Of course, the ECHR does not contain any rules on criminal or tort law, which is at the core of this volume but, due to three peculiarities of the Convention, it seems correct to assume that the findings of the European Court of Human Rights (ECtHR) dealing with the ECHR have the final say in any questions relating to the mass media not national tort and criminal law. Firstly, the ECHR requires the Signatory States of the Council of Europe to provide an effective remedy against human rights violations.\textsuperscript{7} Amongst the instruments used by

\textsuperscript{5} The freedom of the press is only mentioned in some constitutions but, where this is not the case, it is usually implied in the freedom of speech.

\textsuperscript{6} In particular, art 19 UDHR 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.’

\textsuperscript{7} See art 13 ECHR: ‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’