

**Free Speech and Praxis: Philosophical Justifications
of Freedom of Speech and their Application During
the Nineteenth Century**

John Steel

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IN MEMORY OF MY PARENTS

SUMMARY

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JOHN STEEL

Department of Politics, University of Sheffield

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The main aim of this thesis is to analyse and explore the philosophical justifications for freedom of speech during the nineteenth century and their application as political praxis. In this work, specific types of free speech argument are identified and examined in the light of the ideological stance of those who sought to argue for freedom of speech, primarily from key ideological perspectives of the nineteenth century, utilitarianism, liberalism and socialism. Initially three types of free speech argument are identified: the accountability argument, the liberty argument and the truth argument. However, on an inspection of socialist arguments for freedom of speech, the author suggests that a fourth sufficiently distinct type of free speech argument is present, particularly within the more mature works of socialist radicals and agitators. Though the arguments for freedom of speech overlap within different ideological and historical contexts, a case is made for a relatively distinct type of free speech argument within the socialist political praxis of free speech. Furthermore, in examining key political and philosophical texts, *and* an analysis of the free speech arguments in nineteenth century political pamphlets and newspapers, the argument is made that in order to gain a thorough understanding of political history and philosophy a holistic approach should be adopted, one which looks at ideas, context, history, artefact, and political praxis.

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CHAPTER ONE

Introduction

CHAPTER ONE

Introduction

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CHAPTER ONE

Introduction

1.1: Introduction: Aim of the Thesis

It is the purpose of this thesis to provide an investigation into the theory and practice of freedom of speech during the nineteenth century. This analysis is unique in that not only does it seek to combine an exploration of philosophical arguments for freedom of speech emanating from a range of political and philosophical perspectives during the nineteenth century, it also evaluates these arguments in the context of political practice or praxis.¹

The focus of the thesis then is to examine and explore the ideas of free speech – the philosophical arguments for freedom of speech *and* the application of these ideas through praxis and in relation to the specific context in which they were developed during the turbulent years of the nineteenth century. This exploration will be made in relation to the way arguments for free speech were articulated and represented through the penmanship of radicals, dissenters and agitators of the day, the work of which was predominantly represented in radical political newspapers, pamphlets and journals; this particular mode of transmission is dealt with here, as it was the main form of mass political communication during the nineteenth century. As we will see, the struggle for freedom of speech during the nineteenth century should be seen in the light of the economic and political landscape of Britain, which witnessed massive social upheaval and change. Indeed the consequences of industrialisation and the assertion of *laissez-faire* political economy have an important role in shaping many of the arguments to be

¹ Borrowed from Marxism, praxis is the 'willed action' in which a theory or theoretical stance becomes a practical social activity.

explored herein. Moreover, I will demonstrate that arguments for freedom of speech were often made to underpin wider political objectives, from widening the political franchise, to the socialisation of the working classes into an acceptance of *laissez-faire* economic policies.

In order to maintain some sense of structure and order, in what could be philosophical and historical chaos, I have organised this exploration around three predominant currents of radical political thought during the nineteenth century: utilitarianism, liberalism and socialism.² These main currents of political thought form the theoretical backdrop of radical politics during the nineteenth century and, as such, all offer various conceptions of freedom of speech, with differing stimuli and motivations. As we will see, the range of arguments used by agitators and activists during the nineteenth century often overlap and indeed merge, and it is a key purpose of this thesis to unravel and clarify the types of arguments used by radicals during this period.

What though is the main motivation behind this work? As we will see there is a wealth of literature on the ‘development of the radical press’, the ‘history of the newspaper trade’ and the ‘struggle for a free press’ during the nineteenth century. It is of crucial importance to note that this thesis sets itself apart from the majority of other work on issues regarding free speech during the nineteenth century by analysing the historical features of such arguments, their philosophical structure *and* their application as represented in populist political literature. In short this thesis seeks to examine arguments for free speech during the nineteenth century, in terms of their philosophy, their mediation, their articulation and their context. A study of freedom of speech which examines the main currents of radical

² I would like to thank Geraint Williams for suggesting early on in my studies that I adopt a structure similar to that provided in his *Political Thought and Public Policy in the Nineteenth Century*, with R. Pearson (New York: Longman, 1984).

thought *and* application to free speech during the nineteenth century, has not been done before in this way. This thesis then seeks to add to the literature that has at its focus the various 'histories' of freedom of speech and the freedom of the press. In addition to this, the author also sees this thesis as a valuable contribution to works on freedom of speech that have as their focus a more theoretical analysis by exploring the theory *and* practice of freedom of speech within a specific historical context. In undertaking this work, I am also asserting that theory and practice should not be analysed separately, but seen as a whole within the bounds of historically specific contexts. As such, this thesis is also presented as a contribution to the literature on the history of political ideas, as it demonstrates a way of exploring political ideas that is grounded within the social, political and historical context of the period under investigation.

This introduction will proceed as follows. After discussing the scope and focus of this work, some key definitional issues will be addressed. Firstly, in order that we can gain an understanding of the types of arguments for freedom of speech used during the nineteenth century, I will highlight the main types of philosophical arguments for freedom of speech to be examined throughout this thesis. This is an important preliminary task as we will see there was a range of arguments used in different circumstances and for different ends, and at this early stage it is important, for purposes of clarity and thoroughness, that an understanding of the different types of arguments for freedom of speech are highlighted. Furthermore, in outlining these different types of arguments, or as I term them - typologies of free speech - I am providing a theoretical base line from which a more detailed investigation into theory and practice will be made.

After a discussion of the types of free speech argument present in this thesis, I will work through what I understand to be the 'language' of free speech; that is, what exactly is it that I am referring to when I discuss freedom of speech? Am I referring to the process of simply freely uttering words openly and free from censure from authority; am I referring to freedom of expression with reference to the arts, literature and other means of expression; or is free speech meant as the

freedom of the press? It is important that this issue is cleared up sooner rather than later. As we will see it is the latter definition that I have in mind for various reasons and I will set these out below.

Following the discussion on terms of reference, I then move on to discuss the methodological tools that I have employed throughout this thesis. Indeed, the methodological position that I have adopted is itself a key aspect of the way that the thesis is representative of a new body of work in that it places equal weight on the history and theory of freedom of speech.

Finally in this introduction I review relevant literature within this field. As noted there has been much work already undertaken on free speech and its development during the nineteenth century, and as part of this introduction I will provide an, albeit brief, overview of the array of literature on this topic. This brief survey will perform a dual function by firstly highlighting the breadth and depth of literature within this field (some of which has been used as useful secondary material) but more importantly it highlights a gap in the literature. The literature review will demonstrate the lack of attention by many authors to, for example: key historical contextual features of nineteenth century political philosophies of free speech; the internal structure of these ideas; the articulation and mediation of these ideas and the implicit and explicit motivation behind such theories - how these ideas developed and matured to fit the changing circumstances of the nineteenth century. Furthermore, the literature review will highlight differing types of analyses of freedom of speech during the nineteenth century, from relatively uncritical surveys such as those provided by Robertson³ and Bury⁴ which echo enlightenment and progress as winning the battle for freedom of speech; to more

³ J. M. Robertson, *A Short History of Free Thought* (London: Watts & Co., 1915).

⁴ J. B. Bury, *A History of Freedom of Thought* (London: Oxford University Press, 1952).

sharp critical analyses from the likes of Hollis,⁵ Wiener,⁶ and Curran and Seaton⁷ who stress more complex, economic and social factors impacting on the 'struggle' for freedom of speech and press freedom.

The remarkable courage of the early radicals directly involved in the struggle against state repression of the press, and their passionate commitment to the concept of a free press is well documented. It has suffused the nineteenth century campaign against state economic controls of the press with a glow of libertarianism that the much quoted sentiments of middle-class radicals like Cobden seem merely to echo and corroborate. This has given rise to the belief that the campaign against 'the taxes on knowledge' was inspired by libertarian ideas 'grounded in Milton, Locke, Mill, and the Enlightenment', albeit sustained by a substratum of special interests.⁸

As we will see, the divergence in analysis is sharp. Having dealt with all these important introductory preliminaries, Chapter Two can at last get under way.

1.2: Scope of the Thesis

Philosophical echoes from the nineteenth century are present in many of the conceptions of free speech we have with us today; justifications for free speech which are, in an assortment of various forms, either enshrined in constitutions or implicit within legal frameworks. However, an analysis of these echoes and how modern day political philosophers have sought to reinterpret and reapply some of those key ideas falls far beyond the scope of this thesis. Also, this thesis does not

⁵ P. Hollis, *The Pauper Press, A Study in Working-class Radicalism of the 1830's* (London: Oxford University Press, 1970).

⁶ J. H. Wiener, *The War of the Unstamped. The Movement to Repeal the British Newspaper Tax, 1830-1836* (London: Cornell University Press).

⁷ J. Curran & J. Seaton, *Power Without Responsibility, The Press and Broadcasting in Britain* (London: Routledge, 1999).

⁸ J. Curran, 'The Press as an Agency of Social Control: An Historical Perspective'. In G. Boyce, J. Curran, and P. Wingate, eds. *Newspaper History: From the Seventeenth Century to the Present Day* (California: Sage Publications, Inc., 1983), p. 53.

seek to take a ‘great thinkers’ approach to free speech which often place specific contributions to political philosophy outside important historical contexts, with little or no emphasis on the contextual parameter in which these ideas were mediated. Although key ideas from radicals such as Bentham and John Stuart Mill will be examined, they will be done so with reference to the social and political culture in which they were articulated and sought to gain influence. Having said this, the thesis is not a history of free speech, as this has been provided elsewhere.⁹ I will however, provide a brief history of freedom of speech before the nineteenth century so that some sense of historical dynamic and philosophical movement can be gained.

In terms of the scope of the thesis, it is primarily concerned with the ideas and praxis of freedom of speech that emerged during the nineteenth century. The historical scope of the substantive parts of the thesis mainly cover the years up to 1860 primarily because many of the formal legal restraints on the press were removed by the end of the 1850s. Of course there were other emerging concerns about the potential effects of an increasing franchise, and these concerns will be highlighted; however, the key aspects of political agitation analysed here focus on attempts to remove formal censorship in the form of taxes on the press. Another point which should be raised here is that although the focus of this study is Britain, important philosophical currents will be analysed that have no fixed geographical base. As we will see, many of the political movements, especially in the early years of the nineteenth century, were heavily influenced by thinkers who originated outside of Britain. For example, Mill talks of the influence of the Saint-Simonians; de Toqueville’s influence is very strong also, and of course Marx’s contribution to political philosophy is immense. Thus some reference to theory that originates from outside Britain is inevitable in a study such as this. As

⁹ The literature review herein points to examples of such work.

we will see, the debates and arguments that are the focus of the thesis are of pivotal importance to a time of vast technological, political and social change in Britain. The development of mass education which enhanced literacy rates, advances in communications technology and the vibrant philosophical climate, all contributed to the stimulation of new thinking in terms of rights and the limits of the rights of individuals and groups.

To recap then, this thesis is not a history of the struggle for free speech, nor a history of the newspaper industry; nor is the thesis a survey of political movements during the nineteenth century even though many of the issues I will be exploring stem from strong political currents that often buttressed political groups. Nor is it an examination solely of the ideas that fed the struggle for free speech; indeed as I point out below in my section on methodology, it is in fact a combination of all of these, a combination that makes this work distinctive.

1.3: Structure

Following this introductory Chapter, I move to Chapter Two which provides an historical and philosophical overview of arguments for freedom of speech that preceded the nineteenth century. This chapter examines the political and religious turmoil of the sixteenth and seventeenth centuries and explores the struggles for religious freedom and toleration that inspired many radicals and dissenters during the nineteenth century. The chapter also briefly looks at the emergence of the Enlightenment and the impact this had on developing arguments for toleration and freedom of opinion. From the calls for religious toleration emanating from John Milton, to the John Wilkes affair in the late eighteenth century, this chapter covers a relatively vast historical space and as such provides only a cursory glance at some of the key events and themes that impacted on the nineteenth century. In essence, this Chapter Two provides an introduction to the historical and philosophical background of freedom of speech up until the nineteenth century and as such provides a precursor to the main substantive chapters. I argue that the importance of this chapter is evidenced in the way it draws attention to

the importance of the Enlightenment in contributing to a new view of mankind which then impacts on later arguments for freedom of speech.

Chapter Three will provide the all important social, economic and cultural context on which the main substantive chapters will be framed. Again methodological considerations are paramount here, as the importance of highlighting the context of the philosophical arguments for free speech has already been mentioned and is an important thread that permeates this entire thesis. Chapter Three will demonstrate that the changing social and economic features of the nineteenth century did much to shape the nature of the philosophical and political debate around free speech. I argue that such changing features impacted massively, mainly because of economic and political considerations centred around the gradual shift in political power and the emerging middle-class elite.

The next three chapters of the thesis form the main bulk of this work and focus on utilitarian theory and praxis of free speech, followed by liberal and then socialist theory and praxis. These chapters will be structured similarly, as I initially highlight the basic theoretical parameters on which the justifications of free speech are made. From this I move more specifically to the theoretical structure of the arguments for free speech before moving on to provide examples of how these ideas were mediated and articulated in the public sphere, through radical newspapers, journals and pamphlets. These ideas are articulated by the main proponents of the ideas in question, and by lesser known individuals interpreting and advocating such ideas. Finally in each chapter I provide an evaluation of the arguments and their articulation in relation to the methodological stance undertaken. Although this outline is a useful starting point, it will be useful to go into a little more detail of the substance of each chapter.

Chapter Four examines the utilitarian philosophy and praxis of freedom of speech. As such the chapter begins by highlighting the main components of utilitarian thought as provided by Jeremy Bentham and James Mill. From this

analysis of the foundations of utilitarianism, I look more closely at utilitarian arguments for freedom of speech. Here we initially see that such arguments were primarily concerned with advancing democratic government and stemming abuses of authority via a form of the accountability argument for free speech. However, on closer analysis of the utilitarian praxis of freedom of speech, rather than an assertion of democracy we see that a form of anti-democratic paternalism is expressed in many of the political tracts and pamphlets. Rather than advocating democracy, as had Bentham, the utilitarian praxis of freedom of speech expressed a deep desire to place the emerging middle-class into a position of power, not only over the machinery of government, but also over the so-called 'lower orders' so as to ensure the smooth running of the free market. Through an exploration of arguments which sought an end to the 'taxes on knowledge' this paternalistic feature of the utilitarian justification for free speech is examined with reference to historical evidence and involves a re-evaluation of utilitarianism's theoretical structure. Indeed, for the so-called lower orders, I argue that the utilitarian free speech argument was less about providing mass education for the working classes and more an argument for moral censorship and social control.

Chapter Five examines liberal arguments for free speech which again, as we will see, have their roots in the development of the free market but also in the secularist movements of the nineteenth century. In this chapter I devote some attention to the work of John Stuart Mill. After looking at Mill's early newspaper writings, which dealt with freedom of speech, I move on to explore some key issues and themes in *On Liberty*, with reference to some critical and some not so critical analyses. Importantly, Mill is also explored with regard to his conception of equality, and its relation to liberty and freedom of speech. Here I suggest that Mill's arguments in *On Liberty* are undermined by his view of political economy and his distrust of egalitarianism. Having looked at Mill in some detail, I then move on to more mainstream liberal arguments for freedom of speech, which were centred around the predominantly middle-class 'Association for the Repeal of the Taxes on Knowledge', centering on key arguments and activity. Again here

I argue that liberal arguments for freedom of the press are contextually bound to the development of the free market and the struggle for political power. As such, an important feature of this activity was to stifle working-class interests and subsume working-class movements within the 'logic' of liberalism. Again, education is a key factor, as the role and function of education via a cheap popular press meant that barriers to publishing must be removed and markets must be opened up to competition. Justifications for freedom of speech have at their root market considerations against monopoly and the disempowerment of working-class radicalism. I argue that such middle-class activity sought to empower the middle-classes by attempting to pacify working-class radicalism; free speech here again is a form of social control. I conclude by noting that although Mill's arguments should be seen as a distinct and more sophisticated form of free speech argument than those of mainstream liberalism, Mill's specific conceptions of liberty and equality, and their relation to his views on political economy, raise serious questions about the application of Mill's theory to political practice.

The concept of equality is revisited in Chapter Six, in which I examine socialist justifications for free speech. This chapter looks initially at conceptions of socialism and key elements of the theory. I then focus on early working-class radicalism, which viewed freedom of speech as a means to political emancipation through representation in government. From this we move on to more sophisticated justifications of freedom of speech which are constructed to demystify the prevailing social relations and assert a class agenda to politics and social change. I analyse the philosophical structure of these ideas and suggest initially that they have their roots in the typologies of freedom of speech as represented in previous chapters. However, in examining the more developed analysis of socialist agitators, I suggest that we see a shift in emphasis that makes the socialist arguments sufficiently different from those highlighted in previous chapters. By exploring the analysis of the more sophisticated socialist radicals such as Henry Hetherington and Julian Harney we see socialist arguments for

freedom of speech taking on a particularly distinct character, emphasising class solidarity, brotherhood, equality and freedom from oppression. This distinctive type of argument is articulated further when we examine Marx's contribution, which represents a far more sophisticated form of the argument for freedom of speech for socialists as it combines a thorough analysis of class, economics and history within its make up. Finally in this chapter I speculate on how the socialist justification for freedom of speech might operate within the context of an idealised socialist society. Indeed, I speculate on whether a socialist justification of freedom of speech is necessary within the context of an idealised socialist society, and if so, what are its limits.

I then conclude the thesis in Chapter Seven by briefly revisiting the discussion of the main substantive chapters and by arguing that the main motor force behind the various arguments for free speech lay in the contextual bindings of developing nineteenth century capitalism. I make a final methodological point by asserting that in future any discussion of political philosophy should take into account both the context and the mediation of ideas.

Finally, I am aware that I have not been able to provide a comprehensive study of all the examples in which arguments for freedom of speech were made; this I think would have been unrealistic, given my chosen methodological stance and the relatively limited space. Moreover, I have not included every single example of the theory and praxis of free speech, only those that were part of the main currents of political thought during the nineteenth century. To provide an analysis of all examples of the praxis of free speech, in the light of my method and focus, would have been too great a task given the limitations of time and space. It is hoped that this work will act as a starting point, at least methodologically, from which further investigation can be made. The thesis seeks to offer a flavour of the history, philosophy and praxis of free speech during the nineteenth century and in doing this, I have highlighted the three most obvious examples: utilitarian, liberal and socialist. There were others, but let us leave these for another day.

1.4: Philosophical Typologies of Free Speech

Historically and philosophically there have been numerous justifications for freedom of speech. It will be helpful for this study if we can isolate in philosophical terms, specific kinds of arguments that have been historically deployed during the nineteenth century. I must point out, however, that in identifying specific ‘orthodox’ typologies of freedom of speech, I am not asserting that the types of arguments that exist are mutually exclusive in political practice. Furthermore, I am not asserting that the typologies of free speech outlined below are the only types of argument that exist for freedom of speech. However, as I am focussing on the argument and praxis of free speech during the nineteenth century, it is necessary for me to highlight the main types of orthodox argument that were deployed during this important historical period. As will become evident, often arguments for freedom of speech overlap at different times and in different circumstances; but in identifying types of arguments for freedom of speech in this introduction, I am setting up a frame of reference from which we can view the philosophical arguments and praxis in the main substantive chapters.

The typologies I shall outline here fall into three main categories: Firstly, arguments for freedom of speech that stem from a commitment to holding those in power accountable to the majority. I shall call this typology the ‘accountability’ argument, as it relates specifically to the role that free speech plays in guarding against abuses of power and supporting representative institutions. Secondly, I highlight a type of free speech argument that stem from a conception of individuality; I will call this type of argument the liberty argument. Finally I point to arguments for freedom of speech that assert a commitment to uncovering and attaining the truth; I will call this type of argument the truth argument.

i, The Accountability Argument

The accountability argument is based on the assertion that groups or individuals who hold political power are intrinsically self interested. That is, they are essentially committed to maintaining and possibly expanding their hold on the

instruments of power that they have at their disposal. Such a view maintains that self-interested governments have to be held accountable by those whom they govern, and a key means of promoting a sense of accountability is freedom of speech. Freedom of speech allows those who do not directly hold political power to check those in authority and stem abuses of power. Hence, those in power are held accountable by public scrutiny via freedom of speech, usually through freedom of the press. This argument for freedom of speech, speech that challenges authority and attempts to highlight 'errors' in governance, has political, moral and epistemological dimensions to it, and I shall deal with each of these in turn.

In terms of its political dimension, the accountability argument is, on the surface, relatively straightforward. Free speech is necessary to ensure good government, primarily by holding those in power accountable in a public arena. In doing so, any perceived wrongdoing or error enacted by government, can be challenged in an open arena of public debate that is facilitated by freedom of speech. It is clear then that in order to justify such an argument it is necessary to show that authority in government is not intrinsic to government and that there is another 'higher' authority to which governments should be held accountable. This could be God, it could be the people, or it could be a specific abstract concept.

A very early example of notions of accountability is provided by Pericles in his funeral oration in Thucydides's *History of the Peloponnesian War*. In this speech Pericles highlights the virtues of democratic political systems and goes on to note that accountability is indispensable to the Athenian system of democracy:

If we look to the laws, they afford equal justice to all in their private differences; if to social standing, advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way, if a man is

able to serve the state, he is not hindered by the obscurity of his condition.¹⁰

He continues:

[...] ordinary citizens, though occupied with the pursuits of industry, are still fair judges of public matters; for, unlike any other nation, regarding him who takes no part in these duties not as unambitious but as useless, we Athenians are able to judge at all events if we cannot originate, and instead of looking on discussion as a stumbling-block in the way of action, we think it an indispensable preliminary to any wise action at all.¹¹

Thus we can see that even in ancient Athens, the virtue of being able to ‘judge events’ and discuss policy are indispensable to the workings of a living democracy. Other examples of the accountability argument surface with the emergence of modern democratic political institutions. With the development of democracy, it became clear that in order to operate according to the principles of equality, governments should obviously be held accountable. Instead of God, the sovereignty of the people that is asserted and free speech is necessary to fulfil two important components of accountable democratic systems. Firstly, in a democracy it is important that the sovereign people have at their disposal all information regarding the dealings of government. Information regarding the practices, procedures and outcomes of political life needs to be made available to all within a democracy so that governments can be seen to be operating according to the wishes of the sovereign people. For example, at the end of the 18th century John Wilkes was prosecuted for publishing parliamentary proceedings. The controversy surrounding this affair was a very important development in the struggle for freedom of speech, and I will focus on this in a little more detail in Chapter Three. However, related to the dissemination of information relating to

¹⁰ Thucydides, *History of the Peloponnesian War* (London: Everyman, 1993, [circa 411 B.C.]), p. 89.

¹¹ Thucydides, *History of the Peloponnesian War*, p. 90.

politics and governance, is the notion that the people also have a role in responding, in a public arena, to those in power. This brings me to my second point relating to the accountability argument, that being the idea that the people themselves have the right in a democracy to publicly censure perceived government error or misdeed. Hence freedom of speech is necessary to allow such censure to occur unhindered from government interference. Here then we can see two closely related arguments for freedom of speech that are intrinsic to the accountability argument; freedom of speech then is essential to democratic government.

We can see examples of the accountability argument throughout history; however, the philosophical basis on which the accountability argument is developed can and does change in different contexts. We can now turn to the moral and epistemological dimensions of the accountability argument. In highlighting differences in the basis of the accountability argument, it is worth briefly looking at the works of Thomas Paine and Jeremy Bentham. Though writing at roughly the same time, Paine's and Bentham's justifications of democracy, and in turn the accountability argument, rest on differing moral and epistemological conceptions of man. Thomas Paine in his *Rights of Man* argues that all governments should be held accountable at all times; not though to some divine entity, but to the people at large. For Paine, in order for a democratic society to operate effectively, and according to certain inalienable 'natural rights', those in government should be held accountable by a free and unrestricted press. Speaking of the National Assembly of France in 1791, Paine notes that:

Speech is, in the first place, one of the natural rights of man always retained; and with respect to the National Assembly, the use of it is their duty, and the nation is their *authority*. They were elected by the greatest body of men exercising the right of election the European world ever saw. They sprung not from the filth of the rotten

boroughs, nor are they the vassal representatives of aristocratical ones. Feeling the proper dignity of their character, they support it. Their parliamentary language, whether for or against a question, is free, bold, and manly, and extends to all parts and circumstances of the case.¹²

Thus the accountability argument for freedom of speech in this sense makes claims to notions of natural rights which are best expressed in the context of democratic political systems and their operation. As we will see in the next section focussing on the 'liberty' typology, notions of natural rights can play an important role in the construction of arguments for freedom of speech. However, conceptions of rights and the accountability argument are not mutually inclusive. For example, Jeremy Bentham argued that natural rights are nothing more than 'nonsense on stilts' and that the only measure for governments was how far they went in promoting the happiness of the majority of the people. Bentham argued that democracy was the best political system, but this was not based on a conception of natural rights as it was for Paine; for Bentham, democratic institutions were viewed as the best form of government because they were the systems most likely to promote the greatest happiness for the greatest number. It was in relation to Bentham's principle of utility that all actions and all systems should be judged and not some abstract notion of rights whether they be 'liberty', 'equality' or 'fraternity'. It was the consequences of democracy, and its tendency for promoting happiness in the greatest number, that underpinned it, rather than conceptions of *a-priori* rights. For Bentham, freedom of speech is necessary for holding those in power accountable in the same ways as Paine, but Bentham's justification differs morally and epistemologically from Paine because democracy is not viewed by Bentham in terms of its connection to 'so-called' inalienable rights, but in terms of its tendency to maximise utility. As Arblaster notes:

¹² T. Paine, *The Rights of Man* (Oxford: Oxford University Press, 1995 [1791]), pp. 141-142.

Since each person pursued his or her own well being, it followed that each person would vote in his or her own interest. The sum total of individual votes ought therefore to promote the utilitarian objective of the greatest happiness of the greatest number. The only people who could be trusted to pursue the good of the people were the people themselves, acting through their elected and accountable representatives.¹³

For Bentham, freedom of speech was necessary, as it ensured that public debate and censure checked government abuses of power. As we shall see, the views of Paine and Bentham were very influential especially during the earlier part of the nineteenth century and I will return to these arguments in more detail below. First, it is necessary to move on to the next typology of free speech, that being the liberty argument.

ii, The Liberty Argument

The liberty argument for freedom of speech deployed during the nineteenth century can be summarised as follows: freedom of speech is a necessary expression of the ‘natural rights’ of man; it is a fundamental component of what it is for men and women to be free. Barendt summarises this view when he notes that ‘people will not be able to develop intellectually and spiritually, unless they are free to formulate their beliefs and political attitudes through public discussion, and in response to the criticisms of others.’¹⁴ In philosophical terms this perspective has been developed in terms of positive and negative liberty.¹⁵ Briefly, positive conceptions of liberty can be summarised as freedom ‘to’;

¹³ A. Arblaster, *Democracy* (Buckingham: Open University Press, 1987), pp. 44-45.

¹⁴ E. Barendt, *Free Speech* (Oxford: Clarendon Press, 1985), p. 14.

¹⁵ In his essay entitled ‘Negative and Positive Freedom’, G. C. MacCallum Jr. challenges the view that the distinction between positive and negative freedom is ‘sufficiently clear’. What MacCallum asserts is a formula based upon a triadic notion of freedom. He notes that freedom is where ‘x is (is not) free from y to do (not do, become, not become) z.’ G. C. MacCallum Jr., ‘Negative and Positive Freedom’ in D. Millar ed., *Liberty* (Oxford: Oxford University Press, 1991). p. 102.

whereas negative conceptions of liberty are usually articulated as freedom 'from'. Firstly, positive freedom - freedom 'to'; in relation to freedom of speech, this positive freedom is usually expressed as freedom to speak, communicate, convey, and express. In his discussion of positive liberty or freedom, Berlin makes the following point:

The 'positive' sense of the word 'liberty' derives from the wish on the part of the individual to be his own master. I wish my life and decisions to depend on myself, not on external forces of other men's acts of will. I wish to be a subject not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were from outside.¹⁶

In relation to freedom of speech this conception of positive freedom is asserted as the freedom to express oneself as directed by one's own rational energies. Positive liberty is centred on an agent's rational self-direction. In addition to this concept of positive liberty, Berlin also asserts a negative conception of liberty. This aspect of liberty should be seen as freedom from, as opposed to freedom to. Berlin notes:

I am normally said to be free to the degree that no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others.¹⁷

Arguments emanating from negative conceptions of freedom have as their starting point notions of individuality and the protection of expressions of individuality from external forces. Such arguments are pertinent to freedom of speech most notably in relation to discussions about censorship, as freedom from censorship is perceived by many liberals, as a fundamental human right, with a few notable exceptions that are again linked to freedom 'from' arguments. In political philosophy, probably the most important example of this conception of liberty emanates from John Stuart Mill in his book *On Liberty*. I will focus on

¹⁶ I. Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), p. 131.

¹⁷ Berlin, *Four Essays on Liberty*, p. 122.

Mill in detail in chapter five, however, it is worth summarising his arguments here, for clarity's sake.

Prominent in Mill's thought is the notion of the autonomy of the individual; for Mill, it is a necessary condition of a fulfilled life. As such the autonomy of the individual is not suppressed in any way unless the actions arising out of that autonomy impact on the autonomy of another or other individuals. Mill famously states in *On Liberty*:

[...] that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.¹⁸

As such we can see Mill's argument here as comprising a negative conception of freedom, with the negative aspect acting as an *a-priori* restraint. Mill continues to note that unless men and women are protected from interference, humanity, with its propensity to diversify and experiment, will not develop and flourish. With regard to freedom of speech, we can see clearly how such conceptions of positive and negative freedom underpin arguments for freedom of speech and freedom of expression within the confines of the liberty argument. Such an argument states that rational expressive acts should be given space as they are a fundamental component of human flourishing; however, people should also be protected against expression that takes away or limits in any way their ability to freely express themselves.

According to this typology, no overarching power can or more pertinently should stifle human expression as this would impede human flourishing and

¹⁸ J. S. Mill, *On Liberty*, in *Collected Works*, Vol. XVIII Edited by A. P. Robson and J. M. Robson (London: University of Toronto Press, 1977), p. 223.

development. Part of what it is to be a rational human being, is to be able to freely express opinions usually through a free press. This very briefly is Mill's primary argument in *On Liberty*, where he sees a potential threat to liberty mainly emanating from the weight of public opinion. As Mill famously states '[i]f all mankind minus one, were of one opinion, and only one person were of a contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.'¹⁹ However, although the broad argument presented in *On Liberty*, has been summarised above, in Chapter Two of *On Liberty*, Mill attempts to justify freedom of speech with particular arguments which assert the search for truth as a key manifestation of the expression of individuality. These particular justifications will be explored below in Chapter Five, for now though it is necessary to deal with the truth argument as the third typology of freedom of speech.²⁰

iii, The Truth Argument

The truth argument is an argument that posits that a necessary component of what it means to be a rational human agent is an unconstrained search for the truth or at least (in the case of John Stuart Mill) some movement towards the truth. This epistemologically centred typology is based upon a number of suppositions about the truth: Firstly, and obviously, for such an argument to have any force, there must be a belief in truth existing, and in a way that can be understood by the human senses or intellect. Secondly man must be capable of attaining the truth by 'intellectual industry' or agency; there must be some belief in the human capacity to attain at least an approximation of the truth. Thirdly, the truth argument is based on the supposition that truth is valuable to human existence; it has to be

¹⁹ Mill, *On Liberty*, p. 229.

²⁰ As noted, this overview of the typologies of freedom of speech serves as an introduction to the main arguments; in Chapter Five I will focus more closely on Mill's arguments for freedom of speech as presented in *On Liberty*.

seen as something worth pursuing as an end in itself, and in this sense is very much a part of enlightenment thinking. Frederick Schauer summarises the truth argument succinctly when he notes that:

Throughout the ages many diverse arguments have been employed to attempt to justify a principle of freedom of speech. Of all these, the predominant and most persevering has been the argument that free speech is particularly valuable because it leads to the discovery of truth. Open discussion, free exchange of ideas, freedom of enquiry, and freedom to criticise, so the argument goes, are necessary conditions for the effective functioning of the process of searching for the truth. Without this freedom we are said to be destined to stumble blindly between truth and falsehood.²¹

It is only in an open arena where debate is unconstrained by external force that the discovery or at least movement towards the truth is possible. Schauer goes on to point out that historically figures such as Milton and Mill have used arguments for freedom of speech that have as their base a commitment to the unhindered search for the truth. However, I will turn to Milton's and Mill's arguments in later chapters, for now, it would be useful to examine the truth argument in a little more detail. The truth argument posits that freedom of speech is necessary to the discovery of truth, or at least, a movement towards some conception of the truth. For this to occur, no external constraints on freedom of speech should exist as only within the context of an open free market of ideas can the truth be attained. This market analogy is useful as it posits that, as in a free market, there exist a number of competing perspectives, viewpoints or ideas; from this pool of ideas, those which stand up to the scrutiny of competition (competing arguments) or those which win over the competition in debate should be posited as, if not the truth, then a movement towards an approximation of the truth. This argument is probably most prominently associated with the arguments of John Stuart Mill;

²¹ F. Schauer, *Free Speech a Philosophical Enquiry* (London: Cambridge University Press, 1981), p. 15.

however, as we will see, the market analogy used in relation to Mill's arguments may or may not be helpful. Given this doubt, it may be useful to seek an example of the truth argument, at this preliminary stage, elsewhere.

As noted, for the truth argument to have any force, the truth as an end must be perceived as having intrinsic value. This type of argument is prominent in the work of both Plato and Aristotle and it is worth considering the arguments present in Plato's *Apology* as an example of this type of argument. Key to understanding the truth argument for freedom of speech in the *Apology*, is an understanding of the Socratic elenchus or method. Socrates' elenchus is a dialectic form of cross-examination in which the questioner (in this case Socrates) refutes an opponent's thesis by drawing out contradictory elements of his argument. For this method to operate, free discussion must be allowed. At no point in any Platonic dialogue does Socrates attempt to silence his opponent by any other means than the refutation of his opponent's arguments. Socrates' main focus is on the pursuit of happiness and virtue, for himself and for the whole of Athens. Such an existence can only be attained through complete knowledge, which in turn can only come about through unencumbered debate and rational argument, argument that moves towards specific understanding and some model of the truth.

It is evident therefore that some concept of free speech must be in operation, as it is necessary because the dialectical progression towards knowledge can only come about through open discussion and unfettered debate. W.F. Campbell²² argues that similarly to liberal theories of the market, the Socratic elenchus seeks to bring about the most rational outcome in debate; this can only surface in a 'free market' of ideas. Mara²³ too brings out the crux of the Socratic justification of

²² In W. F. Campbell, 'The Free Market for Goods and the Free Market for Ideas in the Platonic Dialogues.' *History of Political Economy*, Vol. 17, No. 2, (1985) pp. 187-197.

²³ In G. A. Mara, 'Socrates and Liberal Toleration.' *Political Theory*, Vol. 16, No. 3, August (1988) pp. 468-495.

free speech in terms of the Socratic elenchus. By highlighting the arguments in the *Theaetetus* and *Protagoras*, Mara's position is that although Socrates is implicitly intolerant of ideas that conflict with his own views, this intolerance does not resort to any advocacy of censorship or physical restraint of other ideas, but only an intellectual bombardment of those ideas that are intended to leave his opponent in no other position than one that forces him to question his ideas more thoroughly. Socrates is only intolerant of those ideas that would make free speech impossible. Mara notes that:

Plato's Socrates is undoubtedly committed to the possibilities of conclusive knowledge and perfected practice. But these possibilities are not rigid standards used to condemn imperfect thoughts or actions. Rather they are conditions that make intellectual and moral progress (learning and improvement) coherent and feasible.²⁴

A much more generous account of Socrates' defence of free speech and his contribution to liberty of speech and thought is made by a much later commentator on the trial of Socrates. Libanius, writing in the fourth century AD, clearly portrays Socrates as an explicit advocate of free speech; so much so that Socrates almost takes on the mantle of what would be called a 'civil libertarian' today. Libanius's *Apology* has Socrates praising Athens as the city where wisdom is the foundation of its greatness, and free speech is its life breath. In this account Socrates argues that Athens had free speech 'so that free from all fear, we might exercise our spirits by learning as we do our bodies by physical exercise.'²⁵ However, Stone notes, Libanius' Socrates seems too explicit an advocate of notions of democracy and their implicit (in this instance) connection to freedom of speech. On the contrary however, Socrates was never an advocate of democracy; his lifetime's work proved this beyond all doubt. Libanius' account

²⁴ Mara, 'Socrates and Liberal Toleration', p. 489.

²⁵ I. F. Stone, *The Trial of Socrates* (London: Little Brown & Co., 1988), p. 210.

of Socrates' explicit call for free speech does not sit easily with Plato's or Xenophon's accounts, which both assert that Socrates argues that not all men's opinions are of equal value. However, in Libanius' account of the *Apology*, it is clear that Socrates is making an important point that does not come over as boldly in Plato or Xenophon's account, that of the hypocrisy of the charges brought against him:

Your freedom of speech is based on the assumption that every man's opinion is of value, and that the many are better guides than the few. But how can you boast of your free speech if you suppress mine? How can you listen to the shoemaker's or the tanner's views when you debate justice in the assembly, but shut me up when I express mine, though my life has been devoted to the search for truth while you have tended to your own private affairs?²⁶

As Stone points out, if Socrates invoked freedom of speech as a basic right of all, as in Libanius's account, he would have 'struck deep at the heart' of the hypocrisy of the court and the validity of the charges brought against him. However, this point does not resonate as clearly in Plato or Xenophon's account. It is clear though that whichever interpretation of Socrates' justification of freedom of speech one adopts, the theme of Socrates as defender of free speech, emerges even if the scope and consistency of his defence is somewhat unclear. The method that Socrates employs carries with it an implicit argument for freedom of speech, even though he has no conception of rights and freedoms. This said, some of the themes touched on in my brief discussion of Socrates, will no doubt surface again later in the pages of this thesis as these themes are resonant and helpful to an understanding of nineteenth century ideas on free speech; not only in terms of the context in which they were framed, but also in terms of the impact these ideas had upon other philosophical justifications of free speech.

²⁶ Stone, *The Trial of Socrates*, p. 212.

As will become clear later, ‘ripples’ or ‘echoes’ of these arguments are evident in a number of the arguments given greater attention later in this work, most specifically the emphasis on wisdom and the search for knowledge present within utilitarian and liberal justifications of free speech. I should point out finally, similarly to the accountability argument, that the truth argument is not an argument for freedom of speech as an end in itself; as Schauer rightly points out, such an argument is instrumental as a vehicle or ‘means of identifying and accepting truth’.²⁷ This instrumental aspect of freedom of speech is not uncommon in the types of arguments used, as we have seen in the accountability argument summarised above. As such these types of argument should be seen as arguments which lend support to broader ideas or values, and not as principles in their own right. At this stage of the thesis, only the liberty argument can be isolated as a type of argument for freedom of speech that is independent of instrumental motivating factors, as freedom of speech is not a means to an end, but it is framed as an end in itself as it is part of the natural flourishing of man; it is a principle in its own right. It remains to be seen whether such arguments, instrumental or essential, can live up to this weight of expectation placed on them in political practice during the nineteenth century, and I will return to this question when focussing on the praxis of each theory. For now, it is worth summarising the discussion of the typologies of free speech.

It has been the purpose of this section to highlight three distinct but not necessarily exclusive types of argument for freedom of speech that were used by political activists during the nineteenth century. I will of course go into greater detail in the substantive chapters below, but I feel at this stage for purposes of clarity, that some philosophical base line is drawn and the types of arguments used are separated out in raw detail. I have outlined three types of argument that

²⁷ Schauer, *Free Speech*, p. 16.

underpin many of the free speech arguments that were used during the nineteenth century. Firstly, I have highlighted the accountability argument, which posits that within a democracy free speech is necessary to curb abuses of power and ensure the smooth operation of democratic systems. This argument will be seen in practice in various forms in all three substantive chapters within this thesis. Secondly, I have highlighted the liberty argument. This type of argument states that fundamental 'rights' to freedom of expression exist, and no government or authoritative agency has the right to curb the operation of these rights. Such rights themselves are regulated internally by notions of positive and negative freedom. This argument and its expression will be analysed more fully in chapter five. Finally, the argument that the truth is only attainable when restraints on communication are absent. The unconstrained market of ideas makes possible, at best the attainment of truth, at least the movement towards the truth; again in all three substantive chapters, the search for truth as a motivating factor emerges.

In the beginning of this section I noted that the creation of philosophical typologies of freedom of speech would serve to promote structure and clarity within the thesis, as each philosophical justification can then be related back to its typology or typologies. However, I would like to raise the possibility of a fourth distinct typology of free speech that was deployed during the nineteenth century, a typology that on the surface has elements of those types of argument briefly highlighted above, but differs in such a substantive way as to be a separate typology in itself. I will return to this point in Chapter Six. In the final substantive chapter of this thesis, we may see the emergence of a fourth typology of freedom of speech. This possible fourth typology should not be perceived as totally unconnected from the typologies highlighted above. We may see, however, that this fourth type of argument is distinct enough during the nineteenth century to be perceived as an argument or typology in its own right.

1.5: The 'Language' of Free Speech

The actual phrase 'freedom of speech' came into existence in England around the middle of the eighteenth century but the words 'freethinker' and 'freethinking' first appear in English literature at about the end of the seventeenth century. Such terms relate to the struggles against religious orthodoxy that date back to the middle ages. In England as in the rest of Europe, the phenomenon of free thought against religious orthodoxy had existed in specific form long before it could express itself in propagandist writing, or in any generic phrase apart from 'atheist' or 'infidel':

The title of "atheist" had been from time immemorial applied to every shade of serious heresy by the orthodox, as when early Christians were so described by the image adoring polytheists around them; and in Latin Christendom the term *infidelis*, translating the *απιστοζ* of the New Testament, which primarily applied to Jews and pagans, was easily extensible as in the writings of Augustine, to all who challenged or doubted articles of ordinary Christian belief, all alike being regarded as consigned to perdition.²⁸

Phrases approximating to free thought occur soon after the Restoration.²⁹ But it was not until 1713 that Anthony Collins's *Discourse of Free Thinking*, influenced by the growth of a group calling themselves 'freethinkers', that the word started to reverberate in contemporary discourse. In 1718, the journal *Freethinker* was published by Ambrose Philips, and the phrases 'freethought' and 'freethinker' gained a wider more general recognition. In terms of how historians such as J.B. Bury and J.M. Robertson understood the development of the language of free speech, the terms 'free thought' and 'free thinker' approximate to the term 'free speech', as speech is an extension of those thought processes, As Bury himself notes:

²⁸ Robertson, *A Short History of Free Thought*, p. 1.

²⁹ See Robertson, *A Short History of Free Thought*, p. 4.

If a man's thinking leads him to call into question ideas and customs which regulate the behaviour of those about him, to reject those beliefs which they hold, to see better ways of life than those they follow, it is almost impossible for him, if he is convinced of the truth of his own reasoning, not to betray his silence.³⁰

Robertson notes that 'free thought may be defined as a reaction against some phases or phase of convention or tradition.'³¹ Robertson is distinguishing between thought which can be said to be free, (I am free to think about whatever I choose assuming that I have the mental and physical capacity to do so), and critical thought based upon rationalistic exercises. Historically speaking, free thought in the latter sense is the practice of men and women calling into question the sacrosanct and the authoritative, most notably in criticising church and state. As we will see, the way in which this free thought manifested itself was in dissenting literature - pamphlets or tracts etc. most prominently during the seventeenth and eighteenth centuries.³² In contemporary discourse, the term 'free thought' is little used other than in works of history. Moreover, the terms free thought, free speech and particularly freedom of expression tend to be associated with wider freedoms and of course with notions of toleration, which are of course linked to the philosophy of liberalism. Although this thesis is not an investigation into the meaning of toleration or its history, it does acknowledge that the language of free speech, both philosophically and historically intertwine with the language of toleration and free thought, as I demonstrate in Chapter Two. Because of their methodological stance, I feel that both Bury and Robertson do not provide a robust enough analysis of either the language of free speech or its articulation. Part of this deficiency is due to them not sufficiently accounting for the changing

³⁰ Bury, *A History of Freedom of Thought*, p. 7.

³¹ Robertson, *A Short History of Free Thought*, p. 9.

³² What I will highlight in Chapter Two, is the way that free thought transposed itself into arguments for freedom of the press before the onset of the nineteenth century. As such, the discourse moved from arguments in favour of free thought into discussions around free speech which was encapsulated in the various struggles for a free press.

contextual significance of the development of free speech. This is manifested in part in their reluctance to disengage with the term free thought and its association with secularist movements throughout history. More importantly however, their analysis echoes a romanticised view of 'the struggle' which locates activity within the realm of specific individuals who are dislocated from any historical processes.

Where then do these definitional discussions leave us with regard to the language of free speech that is identified within this thesis? It is clear from large amounts of literature that exist on the history of freedom of speech, that sometimes the terms of engagement so to speak, are not dealt with sufficiently. Usually works that concentrate solely on the internal coherence or structure of philosophical arguments for free speech do this as a matter of course, as it is part of their motivation to interpret, understand and explore meaning and coherence. However, this feature of philosophical exploration of free speech is not without terminological difficulties as Geoffrey Marshall³³ notes. Marshall argues that key definitional issues exist in much political philosophy on free speech; in particular, he highlights tensions in the way that the exploration of philosophical arguments for free speech - what he terms 'foundational' arguments - rest with 'applicatory' justifications such as freedom of the press and freedom of expression. Metaphorically speaking, applicatory justifications would be represented cartographically noting the contours and boundaries 'that determine the limits of the protection offered by the free expression doctrine[s] when faced with particular facts or types of issue.'³⁴

³³ G. Marshall, 'Press Freedom and Free Speech Theory', *Public Law*, Spring. (1992) pp. 40-60.

³⁴ Marshall, 'Press Freedom and Free Speech Theory', p. 46.

Marshall explores the question of whether freedom of the press, i.e. freedom to print, and freedom of speech (or freedom of expression) rest on the same or similar philosophical foundations. He notes that in contemporary law the temporal 'distance' between foundational arguments which have their roots in Mill's *On Liberty* are not 'flexible' enough for the multifaceted nature of modern life. These foundational arguments cannot, he argues, account for the increasingly complex communication practices of contemporary society. He notes that Mill's arguments in relation to modern law seem uncomfortably seated. Such discomfort prompts the creation of a 'multi-tiered' theory which ranks applicatory justifications according to practical considerations. In short, Marshall separates the foundational arguments from the applicatory, noting that in modern civilisation foundational arguments such as Mill's cannot be applied to the complex multiplicity of communication practices that modern society presents us with, as free speech 'has many mansions, some more inviolate than the rest.'³⁵ On the face of Marshall's argument then, we have a separation between theory and practical considerations. Again, my methodology overcomes Marshall's concerns by fixing the foundational arguments to their communication practices within the given context under investigation. In Marshall's terms, I intend to reunite the 'foundational' and the 'applicatory' within the context of nineteenth century political thought *and* praxis. Of course, this approach does not have the problems of temporal distance as the foundational theory found in *On Liberty* fits easily into the applicatory processes of the nineteenth century. The point I am making here is that in a work such as this, philosophy and praxis (i.e. arguments for free speech and their application) can and *should* be united both in terms of abstract notions of 'freedom of speech' and their practical articulation: in this context - the 'freedom of the press'. The distance between theory and practice that Marshall argues exist in the contemporary setting, are less evident during the nineteenth

³⁵ Marshall, 'Press Freedom and Free Speech Theory', p. 53.

century. Moreover, foundational and applicatory systems intertwine as issues pertaining to freedom of speech during the nineteenth century were manifested in discussions around freedom of the press. Thus it naturally follows that when I use the term freedom of speech, I am also implicitly relating it to the idea of freedom of the press, as free speech during the nineteenth century, meant on the whole, freedom of the press.³⁶

It would of course be more difficult to apply this methodology to a contemporary situation. More difficult but not impossible. We have historical (albeit recent) evidence of the articulation of ideas, whether they are present in statute or in constitutional practice; we have historical (again though recent) evidence of the mediation of these ideas, whether they be through complex socialisation practices or through the channels of the mass media; and we have dissenting conceptions of free speech as advocated by various groups, groups that have reformulated (with varying degrees of success) the notion of free speech. Two good examples could be the 'Blue Ribbon Campaign for Internet Freedom' and the 'Electronic Freedom Foundation.' Both of these organisations have realigned arguments for free speech to encompass freedom of speech on the internet. Also, these organisations have re-articulated and reformulated notions of freedom of speech to fit into new communication and information technologies; they have done this foundationally, by developing ideas (though derivative) that fit into applicatory constraints and applicatory potentials. Importantly, the mediation of their ideas is via the technology they seek to protect – the internet. Although they speak of internet freedom, their arguments rest on re-applications and re-articulations of arguments for free speech. Thus, despite Marshall's concerns, theory and practice, or foundational and applicatory arguments, can be analysed if the appropriate

³⁶ This approach is not without its difficulties as as we will see, in *On Liberty* J. S. Mill did not use the term free speech. Instead Mill talked of 'complete liberty of thought and discussion within the political order.' I will return to Mill's definitional issues in Chapter Five.

context and their constraining features are accounted for. It seems then, given that discussion is moving around notions of process, it would be a good place to address issues relating to methodology and related problems of analysis.

1.6: Methodology and Problems of Analysis

How after all can politics be understood save as action made meaningful by thought or thought given substance in action? Yet the separation of 'ideas' as something distinct from 'ordinary politics' had for a long time been a feature of much political science.³⁷

History is concerned with the relation between the unique and the general. As a historian, you can no more separate them, or give precedence to one over the other, than you can separate fact and interpretation.³⁸

Only when philosophy discovers in the dialectical course of history the traces of violence that deform repeated attempts at dialogue and recurrently close off the path to unconstrained communication, does it further the process whose suspension it otherwise legitimates: mankind's evolution toward autonomy and responsibility.³⁹

Ideas are the lifeblood of political philosophy. They form the soul of the body politic. However, when exploring ideas that make up the soul of the body politic, often the veins, arteries and other vital organs are neglected. An interpretation of the way that ideas are mediated, interpreted and articulated with reference to the

³⁷ R. Barker, 'Introduction', *Political Studies*, Vol. 48, No. 2, (2000) pp. 221-222. See also Barker's 'Hooks and Hands, Interests and Enemies: Political Thinking and Political Action', *Political Studies*, Vol. 48, No. 2, (2000) pp. 223-238. Here Barker highlights the division of political analysis into 'two distinct zones' and argues that maybe 'a shift in emphasis' should take place in which 'the account is given a fuller dimension without pursuing homogeneity [...]' p. 235.

³⁸ E. H. Carr, *What is History* (London: Penguin Books, 1990), p. 65.

³⁹ J. Habermas, *Knowledge and Human Interests* (London: Heinemann, 1972, [1968]), p. 315. The quotation is taken from Habermas's inaugural address at Frankfurt in 1965 and forms the appendix of that work.

context in which they were developed is often overlooked.⁴⁰ One of the main aims of this thesis then is to articulate an approach that seeks to shift the balance (in some small way) in favour of providing a more rounded exploration of political philosophy in terms of the ideas themselves, how they were articulated and the context in which they were developed and sought audience. It would be inappropriate (and indeed nigh on impossible given the limitations of space and time) to analyse all aspects of political philosophy in this way; I will however, use this method of enquiry to explore what has been termed by many writers on the subject 'the struggle' for free speech during the nineteenth century.

This study then is fundamentally about history *and* political theory. The above quotations from Barker, Carr and Habermas help to emphasise the interwoven relationship between ideas and political action. This study intends to provide an investigation of a type of theory (free speech) by taking into account specific historical features of it, but also, by highlighting the connection between theory and practice, I will have provided an account of the praxis of free speech. Such praxis is demonstrated here, in my analysis of the ideas that sought to develop or justify a notion of freedom of speech and how they were represented in sympathetic newspapers, journals and pamphlets during the nineteenth century. In other words this study seeks to analyse different theoretical conceptions of free speech theory and provide an insight into how these conceptions were articulated

⁴⁰ On writing a later draft of this thesis, I came across an article by Andrew Chadwick entitled 'Studying Political Ideas: a Public Discourse Approach' in *Political Studies*, Vol. 48, (2000) pp. 283-301. I was heartened to read that Chadwick also was largely dissatisfied by the approach of many political philosophers who were negligent or thought it was not important to explore the way in which ideas in political philosophy are mediated and received by their audience. Although my approach differs to some degree from Chadwick's Public Political Discourse approach, they are similar in that they both ensure that historical evidence, the ideas themselves in question and importantly, the historical context are all explored with equal weight.

in the public sphere. In doing this, the praxis of free speech is illuminated and philosophical subtleties and tensions are highlighted, as theory itself is articulated and mediated through specific media. This study is an attempt to unite in a methodologically sound way, the historical features of free speech to their contextually bound philosophical ideas *and* their means of mediation.

i, Practicalities

In terms of practicalities, the materials at my disposal are vast, the focus of the investigation has no shortage of 'raw data' to explore and analyse. As such, philosophical and political treatises that have impacted on ideas of freedom of speech will be consulted and explored. This exploration will provide a philosophical base line on which the relevant pamphlets, journals and newspapers will be considered as these will provide the main bulk of material under investigation. I should note however, that the newspapers and periodicals consulted are not representative of a complete survey of the radical political press during this period; it would, I feel be both almost impossible and inappropriate given the scope of this study to include every example of radical dissent pertinent to this discussion. What I have hoped to do is provide good examples of those newspapers and pamphlets that provide some real substance to the philosophical arguments that they sought to expound and develop. In addition to this material, a wide range of secondary materials will be made use of where appropriate, to add stability to the fabric of the study.

Obviously, most of the work in this thesis rests upon interpretation of certain texts, be they represented in seminal works of political philosophy or in pamphlets, journals and newsletters. Of course, a great deal of study has been devoted to the different ways of understanding and interpreting such texts, and given that I am asserting a particular methodological framework for the study of ideas and history, it is necessary for me to embark on a brief investigation into some of the key arguments and debates that surround the issues of interpretation; some of these have helped me in the development of my methodological

formulations and some I have rejected outright. In working through some of the methodological issues present in a work such as this, by accepting and discarding various methodological positions, it is hoped that a clearer understanding of my methodological stance can be arrived at.

ii, Dimensions of Interpretation

Hermeneutics, the study of methods of interpretation, originated as a technique for understanding classical and religious literature in the middle ages. It developed in the hope of discovering the text's original or hidden meaning. It was the German philosopher Frederick Schleiermacher (1768-1834) however, who first approached hermeneutics as an epistemological problem. Schleiermacher argued that much misunderstanding of philosophical texts occurs due to the inevitable temporal and sometimes spatial 'distance' between the author and the interpreter. What Schleiermacher argued was needed in order to fully understand any author's work, was the employment of a method which would reveal the author's true meaning at the time of writing. Schleiermacher noted that the main problem with then current philosophical analysis, was the notion that somehow interpreters were claiming objectivity in the interpretation of texts: their interpretation was the true interpretation. This 'false objectivity', expressed in interpretations of philosophical texts, was for Schleiermacher, tantamount to a falsification of texts. Schleiermacher argued that false representations of past works were due to the inability of the interpreter to fully understand the author's true *meaning*. Such false objectivity could be avoided however, if the interpreter made an attempt to understand both the language in which the author expressed himself *and* the message expressed in the passage or text. This latter consideration was Schleiermacher's primary concern, as it was necessary for the reader to go beyond the surface message of the text in the light of the interpreter's own language, in order to reach the original or intended meaning. As we will see in the course of history, Schleiermacher was not alone in his aspirations.

In attempting to expand hermeneutical theory and develop a 'science of interpretation,' Wilhelm Dilthey (1833-1911) sought to advance a theory of historical knowledge that would be of equal weight to the theories of the natural sciences. Dilthey argued that 'there was a special access to historical facts which made historical knowledge possible and at least as certain as knowledge of the natural world.'⁴¹ Following on from Dilthey, R.G. Collingwood (1889-1943) further developed ideas that were based on the recovery of the 'real meaning' or subjective components of an author's text. Collingwood's analysis of historical knowledge, an analysis which he termed 'thought in the second degree', has similarities with current work in the philosophy of social science that seeks to explain social actions and their specific meanings in relation to the perceptions and experiences of social actors. For Collingwood, the actions of philosophers are actions which are purposive, but unlike actions undertaken in the present, are not 'directly' accessible to empirical observation. Therefore, they must be understood with reference to further documentary evidence, which involves 'getting inside other peoples heads' and 'looking at the situation through their own eyes'.⁴² Following on from this, historical knowledge can only be gained therefore by 're-thinking' past thought that has been disseminated in literature. According to Collingwood, what is necessary in historical research, is a 're-enactment of past thought in the historian's own mind, where these thoughts could be objectively known by being subjectively lived.'⁴³

The historians of political thought noted above are just some of the historical writers that opened up debates about history and interpretation, particularly in relation to developing ways of understanding the meaning of philosophical texts.

⁴¹ J. G. Gunnell, *Political Theory: Tradition and Interpretation* (London: University Press of America, 1987), p. 106.

⁴² R. G. Collingwood, *The Idea of History* (Oxford: Oxford University Press, 1994), p. 215.

⁴³ Collingwood, *The Idea of History*, p. 107.

However, it was not until an article in *History and Theory* entitled 'Meaning and Understanding in the History of Ideas' that this re-evaluation of historical and philosophical research entered a new phase of development. The author of the article was Cambridge historian Quentin Skinner. Heavily influenced by John Dunn and J. G. Pocock, Skinner argues that 'orthodox' methods of historical investigation which have embraced methods which seek to uncover 'hidden meanings' or assert the 'autonomy of the text' as primary are essentially flawed. Moreover, 'in striving to appropriate the 'classical texts' to the present, the 'orthodox' historians of ideas have generated both mistaken empirical claims and conceptual confusion; they have ignored the uniquely historical question of what the various thinkers intended to say, and have instead deployed interpretative techniques which are not properly historical.'⁴⁴ Skinner's insight is useful and I will return to Skinner's observations below.

So far this assessment of methodology has concerned itself with those historians of ideas who seek to uncover the 'true' intentions of a given philosopher and who focus on methods which concentrate on externalised forms of linguistic action, and on the 'nagging' problem of the distance (psychological, temporal and cultural) between the author and the interpreter. The emphasis has been on developing a 'method' that is based on a translation of written speech. What has been neglected in the attempts to generate a more efficient method of uncovering past events, is a thorough re-framing of the historical structures within which political philosophy is posed. This 'deficiency' in philosophical interpretation has been purportedly addressed by the approach of H.G. Gadamer (1900-1989).

Gadamer argues that it is not necessary to develop a 'method' of interpretation, as it is precisely this pre-occupation with method, that has obscured the true

⁴⁴ J. V. Femia, 'An Historicist Critique of "Revisionist" Methods for Studying the History of Ideas', *History and Theory*, Vol. 20, No. 2, (1981) p. 157.

character of human understanding; by equating understanding of the history of ideas with the understanding of the natural sciences (see Dilthey above) only assumptions based upon false premises can be generated. Gadamer rejects the notion that 'adequate' understanding requires some sort of 'elimination' of the circumstances of the interpreter. Gadamer argues 'that in view of the finite nature of our historical existence, there is something uniquely absurd about the whole idea of a uniquely correct interpretation.'⁴⁵ In addition to this view, Gadamer stresses that the meaning of a text is never reducible to an author's intention nor (importantly) the context in which they wrote. What *is* important is the reading of the text in an open and discursive fashion, or conducting the interpretation as a process of 'question and answer' between the author and the interpreter; with the interpreter's own historical existence playing an important role in the understanding of the text:

the concern of the interpreter should not be with what some individual may have thought but with what is said as it appears or presents itself to the reader. There can be no final or 'correct' interpretation, because the interpretative horizon stands in the moving tradition of history.⁴⁶

What Gadamer is in fact attempting to convey, is a process of understanding that is not based on, in his view, idealistic notions of objectively finding the true meanings of texts, but a process of understanding, in which the interpreter and his or her unique existence, play an important role in uncovering meaning:

To interpret well does not require a blocking out of preconceptions, because it is only through these preconceptions that the meaning of the text can really be made to speak for us. Thus it would be excluding the very thing that makes understanding possible.⁴⁷

⁴⁵ H. G. Gadamer, *Truth and Method* (London: Sheed and Ward, 1989 [1975]), p. 107, 267-69, 289.

⁴⁶ Gadamer, *Truth and Method*, p. 114.

⁴⁷ Gadamer, *Truth and Method*, p. 114-115.

Other critical approaches include the work of Michel Foucault (1926-1984), who analyses text not as a relationship between the author and the document, but with the 'hidden meanings of the text' and the power structures present therein. Foucault's work in this area (particularly in discourse analysis) has, over the last twenty years, presented philosophy with a 'significant challenge to positivist rationality' and argues for alternative agendas, focusing on social practices and communicative action. Because of this focus on power, Foucault was able to emphasise the social and material conditions in which ideas developed, and thus identify a key component of the production of so-called truth. Along with Derrida, Baudrillard and Lyotard (and others), Foucault has been influential in contributing to a developing post-modern literature on studying history and the history of ideas.

In furthering the merits of post-modern approaches, Keith Jenkins in *On 'What is History?'*⁴⁸ posits that the historical approaches of historians such as Edward H. Carr and Geoffrey Elton are no longer useful in our now 'post-modern age.' What Jenkins terms 'upper and lower case histories' are now redundant and this 'redundancy' Carr and his modernist contemporaries display, is magnified as Jenkins sets them apart from post-modern historian Hayden White and philosopher Richard Rorty, both of whom locate their historical spins within deconstructivist, post-modern, post-marxist discourses. He notes that 'those who will be the best guides to history today are those who not only know all about the collapse of upper case and lower case versions [of history] into uncertainty, but who like it and can accept it.'⁴⁹ Such analyses are not to be found within the context of this thesis as I contend (and as highlighted by Jenkins's last statement above) that post-modern approaches display a deep lack of faith in the human

⁴⁸ K. Jenkins, *On 'What is History?'* (London: Routledge, 1995).

⁴⁹ Jenkins, *On 'What is History?'*, p. 10.

subject to grasp and understand the human condition. Moreover, this failure is surely an indication of the culture of low expectations that pervades post-modern approaches (and to some degree so called post-modern society). It is an admission that the human subject should lie down and accept its fate, as we are powerless de-centred entities with no social or historical power. Moreover, many post-modern analyses deny that we are even capable of making sense of history and politics in any meaningful way, as structures, drivers and motivators which are located beyond the subtle interplay of identity and artefact are ignored and often denied.

iii, Modernism Restated

The nature of this study, having a fixed analysis in terms of its emphasis on history and theory, necessitates a more holistic and contextually specific approach. To be adequately understood, the development of free speech needs to be examined in relation to the specific historical conditions that gave rise to it, as well as to the subtle interplay of ideas and events. I argue that context should be an overarching element of the way we understand events and processes and these should not be dislocated from a linear, dynamic view of history. What this study seeks to do is return to the historically and contextually bound interplays that surrounded the philosophical ideas of free speech during the nineteenth century, and place them within a frame of reference that can locate specific drivers and motivators, whilst at the same time giving attention to subtlety and artefact. Although the work of Schleiermacher, Dilthey and Collingwood offer good historical pointers on the development of interpretative techniques, they cannot be of use here as they look for the meaning of ideas whilst not paying sufficient attention to context and mediation.

Similarly void of contextual and historical sensitivity are those approaches developed by Gadamer and particularly Foucault.⁵⁰ Such approaches are far too heavily relativistic and as such can only offer (although sometimes useful) snapshots of events and processes in question. They cannot, in my view, provide a dynamic perspective or fully rounded approach that is warranted when studying the history of ideas and their articulation and mediation. An overemphasis on subjective, reflective approaches, although providing interesting detail and insight, in my view, does not provide or even offer adequate historical or philosophical insight into any particular struggle or controversy. Contemporary trends, both in the history of ideas and in political theory have embraced relativism and sought to divorce themselves from so-called grand narratives. Instead, they highlight complexity and chaos as ‘key features’ or ‘emerging themes’ within a given action.

Having highlighted some of the options open to a historian of political thought, I will now turn to those ideas that have contributed to the analysis presented in this thesis. In doing this, I will turn again to Skinner’s article *Meaning and Understanding in the History of Ideas*. Skinner criticises two common approaches that he argues give rise to various interpretative inaccuracies. Firstly, Skinner rejects the approach which insists upon the ‘autonomy of the text’ as its own meaning. He notes:

The whole point, it is characteristically said, of studying past works of philosophy (or literature) must be that they contain “timeless elements,” in the form of “universal ideas,” even a “dateless wisdom” with “universal application”.⁵¹

⁵⁰ However, I do point to Foucault’s *Discipline and Punish* as a good analysis of the restrictive potential of utilitarianism.

⁵¹ Q. Skinner, ‘Meaning and Understanding in the History of Ideas’, *History and Theory*, 8, (1969) pp. 3-53.

Defenders of this approach, according to Skinner, reject the notion that context has anything substantial to contribute to the interpretation. Skinner (in a similar vein to Schleiermacher) argues that interpreters of a given piece of work using this method of analysis, are in effect imbuing the text with timeless 'universal truths' with 'universal application'. According to Skinner, the danger in attempting to unravel historical texts in this manner, is that our expectations about what someone must be saying or doing will determine what we understand the thinker to be saying. Skinner calls this flawed approach the 'Priority of Paradigms', which leads the interpreter to committing all manner of methodological and interpretative errors.⁵² The interpreter credits the author with an 'inner meaning' which he or she feels that the philosopher is trying to convey; Skinner terms this the 'mythology of coherence'. The example which Skinner uses is enlightening: if for example, in examining Hooker's laws, the scholar can find no coherent meaning, the moral is to look harder for that coherence, because according to orthodox scholarly practice it is surely there. Thus the interpretation imbues any given text with a coherence that may not be there. In further illustrating examples of methodological inefficiency, Skinner cites interpretations of the work of Thomas Hobbes particularly focusing around perceived meaning in Hobbes's political philosophy. He notes:

[...] it becomes the duty of the exegete to discover the 'inner coherence of his (Hobbes's) doctrine' by reading the *Leviathan* a number of times, until - in a perhaps excessively revealing phrase - he finds that its argument has assumed coherence.⁵³

The second common approach which Skinner rejects as inappropriate concerns the over use of context, 'the [...] "religious, political and economic factors" which determine the meaning of any given text and so must provide "the ultimate

⁵² Errors which include what Skinner terms the mythology of doctrines, historical absurdity, the mythology of parochialism etc.

⁵³ Skinner, 'Meaning and Understanding', p. 16.

framework” for any attempt to understand it.’⁵⁴ This overemphasis on context implies a notion of causation, which for Skinner is also methodologically unsound. However, Skinner does not reject the notion of context outright. It is the linguistic component of the contextual setting that is important in the study of the history of ideas, in that the context, rather than being determinant, sets the framework for ‘recognising’ meaning. He notes:

The appropriate methodology for the history of ideas must be concerned, first of all, to delineate the whole range of communications which could have been conventionally performed on the given occasion by the utterance of the given utterance, and next, to trace the relations between the given utterance and this wider *linguistic* context as a means of decoding the actual intention of the given writer. Once the appropriate focus of the study is seen in this way to be essentially linguistic and the appropriate methodology is seen in this way with the recovery of intentions, the study of all the facts about the social context of the given text can then take its place as a part of this linguistic exercise.⁵⁵

Skinner’s observations contribute to the methodological framework of this thesis in that I take heed of his warnings about misinterpreting the intentionality of an author and also of placing too much emphasis on determining contextual factors. However, Skinner’s approach fails to acknowledge the notion of power within the linguistic historical context, something that this thesis will highlight by noting the structural components relevant to shifting the balance of power within free speech discourses. In order to develop this aspect of the work, I have drawn on the work of Jurgen Habermas (1929-).

Habermas attacks the problem of interpretation differently as he develops a methodology that places more emphasis on notions of historical context, particularly in relation to the existence of power dynamics within a given social

⁵⁴ Skinner, ‘Meaning and Understanding’, p. 3.

⁵⁵ Skinner, ‘Meaning and Understanding’, p. 49.

structure, in which texts can be perceived as instruments which express social power or cultural persuasion (a feature that Habermas in particular was critical of Gadamer for ignoring in his analysis). Habermas argues that 'so-called' positivist models of knowledge, represented in whatever form, characterise a one-sided nature of understanding. One-sided, in the sense that other, more reflective or critical modes of understanding and explanation, are not allowed to develop, as culture and institutions within the public sphere only serve the narrow interests of those in powerful positions; Habermas links this process with industrialisation and the development of capitalism. He argues that when analysing texts, a more critical approach should be adopted, and that one should take into account the underlying themes or motives of a particular piece of work. Habermas's analysis is useful particularly with regard to his explanation of the development of power laden communication practices. Habermas argues that with the development of capitalism came new modes of communication and communication practices. Such communication practices were eventually monopolised by the middle-class which took ownership not only of the means of the dissemination of ideas, but also the language in which these ideas were manifested. So for example, within this thesis, utilitarianism's arguments for free speech will be explored in relation to how utilitarianism's arguments are structured, by drawing on their own expositions and others' interpretations of them; how they were interpreted and employed by those who were sympathetic to such arguments; and how they were mediated in the public sphere. All this will be undertaken in relation to the emergence of utilitarianism's arguments within the context of the development of *laissez-faire* capitalism in nineteenth century Britain. The actual practice of defending free speech, mediated through the radical press for example, with reference to particular instances, will allow a direct correlation between theory and practice to be made. Thus, the meaning of utilitarianism's justification for free speech is not solely interpreted on its own and examined for its internal strengths or inconsistencies, but in relation to the practice of that argument as it occurred - the specific conditions that gave rise to the argument - and its mediation in praxis. The arguments for free speech then, will be explored and

explained in relation to the specific historical conditions of capitalism and the power relations that were intrinsic to this phase of history.

Finally in terms of methodology, I take inspiration from the work of historian E.H. Carr when he notes:

The historian and the facts of history are necessary to one another. The historian without the facts is rootless and futile; that facts without the historian are dead and meaningless. My first answer to the question 'What is History?' is that it is a continuous process of interaction between the present and the past.⁵⁶

As we can see from the above quotation, a fine line is walked between the analysis and even recognition of fact *and* subjective interpretation of features of history, such features are represented in particular artefacts in the history of ideas. Artefacts (which are similar to Skinner's linguistic context) in terms of this study include the particular means by which the ideas of free speech were articulated and mediated, most notably in the different strands of the radical press of the nineteenth century. It is this focus on context and artefact that I find most appealing in Carr's analysis, as a key source of material under investigation in this thesis is a specific type of artefact of political thought during the nineteenth century – the radical press. It is of vital importance to note that the radical press are focussed on here because they are one of the main conveyers of political ideas, they are the artefacts. They are examples of the subtle, subjective (but contextually bound) materials that Carr asserts are so important when studying history and the history of ideas.

In this work, I also take inspiration from E.H. Carr's optimistic, modernist framework, as I believe this approach, coupled with Habermasian critical insight, and Skinner's contextual linguistic sympathies, provides a clearer account of the

⁵⁶ Carr, *What is History?*, p. 30.

theory and practice of free speech. Moreover, Carr and Habermas are leant upon in particular, because I draw similar conclusions to them about the state of contemporary western intelligentsia, in the latter half of the twentieth century and for Habermas at the beginning of the twenty first. These conclusions echo concerns about a perceived lack of faith in humanity that materialise from a large amount of contemporary social and political theory. Such lack of faith in the future is best exemplified most prominently in post-modernism's lack of faith in humanity itself. Carr was aware of this during the 1960s, 70s and early 80s noting that we have to keep hold of a vision of humanity and mankind that is dynamic and positive for the future.

1.7: Brief Review of Relevant Literature

Having identified methodological gaps in the literature and how I seek to fill some of these gaps, it is now necessary for me to note where this study sets itself apart from, though hopefully adding to, literature on free speech during the nineteenth century. First of all, although I will be highlighting literature that, in my view, falls short of the historical and philosophical roundedness that my analysis seeks to attain, I must note that I am indebted to the vast array of secondary literature which has illuminated my study and been of use in constructing this thesis. Also, academic custom and rigour state that is necessary in a work such as this that relevant literature is subjected to some scrutiny, some of which will be inspected more closely than others. Moreover, by highlighting the main foci of literature within this field, I am also demonstrating that a gap exists, a gap which this thesis seeks to fill.

It must be noted however, that at this stage of the thesis, to go into great detail of all the literature that I have consulted for this work would be folly, as large portions of relevant literature are consulted in depth later in the work. For now, it is enough that I provide a sketch of the main works that merit mention.

The first notable book on the development of free speech that I came across when undertaking my literature search was the already mentioned, J.B. Bury's *A*

History of Freedom of Thought, (1913). In this volume, Bury chronologically charts the development of free thought from ancient Greece and Rome, through the Middle Ages and the Reformation, finishing with the birth and development of rationalism in the eighteenth and nineteenth centuries. Written from a strongly secularist perspective, Bury is uncompromising in his attack on the forces of oppression that have stifled free thought and its development over the ages. A similar secularist albeit more comprehensive work is that by J.M. Robertson in his almost ironically titled *A Short History of Freethought*, (1915). This two volume work covers a much wider area than that of Bury, in the sense that not only does he chart the development of free thought in the West in greater detail, but also provides examples of the development of free thought under ancient eastern religions in India, Egypt, China. Robertson also goes on to chart the rise of free thought in Israel; and under Christianity, and Islam. His first volume ends at the Reformation and the rise of what he terms modern free thought. Volume two of this work continues in a similar historical vein reviewing the seventeenth, eighteenth and nineteenth centuries in great detail. Robertson is charting the broad development of free thought across Europe, in addition to paying close attention to British and German free thought in the seventeenth and eighteenth centuries. In the final section of this volume, Robertson concentrates on propaganda and culture, surveying the broad movement of popular culture and its dynamic affect on the change in the balance of free thought in modern times. Both Bury's work and that of Robertson were invaluable to me during the early stages of this work as they provided an historical overview, albeit largely secularist, of the 'struggle' for free thought and the rise of arguments for press freedom. Another other work that is of a similar nature include Wickwar's *The Struggle for Freedom of the Press, 1819-1832*, (1928). This work has been useful in highlighting points of resistance to arguments for free speech as well as examples of the arguments themselves.

The main emphasis of A.L. Haight's *Banned Books 387 B.C. to 1978 A.D.* (1978) is on Censorship in the United States. However, the book also covers an

extensive catalogue of banned titles from Homer, Socrates and Confucius, through to the Pentagon Papers in 1971. Although the work does not have any substantial analysis and is more of a collection of titles that have been banned, this book is invaluable for its wide coverage of banned material. Focusing more narrowly on political censorship, R.J. Goldstein in *Political Censorship of the Arts and the Press in Nineteenth Century Europe*, (1989), surveys the context of political censorship during the nineteenth century before going on to analyse in detail political censorship of the press, caricature, theatre, Opera and the cinema focusing mainly on Britain, France and Germany. Donald Thomas's *A Long Time Burning. The History of Literary Censorship in England*, (1969), charts the development of the powers of the censor from 1476 to the Twentieth Century. Although this book is of a general nature, in terms of its chronological structure and analysis, this work has two interesting chapters on the fight against censorship during the nineteenth century. In Chapter Ten, Thomas argues that it was in fact historians rather than the philosophers who justified the existence of a free press. This assertion is an interesting one, and one to which I will examine in greater detail in the following chapters. In Chapter Eleven, Thomas is concerned with Victorian censorship, and seeks to ascertain its *true* purpose; particularly with reference to so called 'indecent' literature. This book also has a large Appendix, which consists of numerous documents and passages which he uses to illustrate the different aspects of literary censorship in England. A similar work, but one which is more a catalogue of censorship is by H.B. Bonner. Entitled *Penalties Upon Opinion*, (1934). This book provides details of censorship trials from the twelfth and thirteenth centuries, up to the nineteen thirties. The majority of highlighted cases in this work stem from the nineteenth century. The main emphasis of this volume is on the many trials for heresy and blasphemy, and Bonner makes no secret of the fact that she intends this book to be a reminder of the extent and injustice of intolerance through the ages. Alex Craig's *The Banned Books of England and Other Countries* (1962) charts the control of books from the grip of the Roman Church in Medieval Europe to the 1959 Obscene Publications Act. Again, this work devotes considerable space to the nineteenth

century, in particular to books and publications that were seen to 'corrupt or deprave'. As well as focusing primarily on Britain, Craig also notes the trials and tribulations of controversial books in France and the United States. *Books Condemned to be Burnt* (1892) by J.A. Farrer, is again, a compendium of censorship (and the ritualised practice of book burning), from the book fires of the sixteenth century, to the late eighteenth century.

Freedom of the Press in England, 1476-1776, The Rise and Decline of Government Controls, (1952) by Frederick Seaton Siebert, provides the reader with an historical overview of the development of free speech, (with particular emphasis on press freedoms) from the Tudor period, through the Stuarts and the Puritan Revolution to George III in the eighteenth century. Siebert's thesis is that the decline of government control of the press can be traced along three main lines of development. The first line represents the sheer number and variety of controls operated by central government. The second is the effort to enforce these controls, and the third is the degree of compliance to these controls. Siebert's work is an attempt to develop some sense of movement between the state and the forces advocating a free press. In a similar vein, but with more detail is *Writing and Censorship in Britain*, (1992) edited by Paul Hyland and Neil Sammells. This book is a compendium of articles tracing censorship from the Tudors through to the twentieth century. Of particular relevance to my research are the articles by Robert Goldstein, M.J.D. Roberts and David Saunders. In *A Land of Relative Freedom: Censorship of the Press and the Arts in the Nineteenth Century (1815-1914)*, Goldstein notes that although Britain was seen by many as a land of freedom, where restrictions on the press were limited, as well as the fact that Britain welcomed 'dangerous' exiles such as 'Marx' and 'Metternich' etc., the authorities still feared the spread and influence of radical political ideas among the working class. Goldstein argues that one of the main ways around this problem was the creation of the stamp tax on the press, which, it was hoped, would deter the poor from purchasing newspapers. As I will demonstrate in later chapters, the issue of the stamp tax was a key political concern to many political

agitators, radicals and pamphleteers. In addition to noting the effects of the stamp tax, Goldstein also highlights the restrictions on the theatre and the arts. He notes the intentionally vague nature of the criteria for the censors and the crude methods of censorship.

The second pertinent article in this collection is M.J.D. Roberts' *Blasphemy, Obscenity and the Courts: Contours of Tolerance in Nineteenth Century England*. In this chapter Roberts attempts to examine the nature of 'post-public legal constraints', which he argues were *not* the sole means of censorship. He notes that it is evident in many of the more notorious blasphemy and libel cases during the nineteenth century, that these cases were used to shape public opinion. This acted as an unofficial support mechanism for the law. The purpose of this was to attempt to make the costly and 'liberty infringing' alternative of 'blanket' law enforcement unnecessary. David Saunders' chapter entitled *Victorian Obscenity Law: Negative Censorship or Positive Administration?* argues that the view of censorship of 'obscene' literature, the so-called 'repressive hypothesis', is flawed. Instead, Saunders presents a picture of nineteenth century obscenity law as one that is independent from the concept of censorship. In his view, obscenity law should be seen in terms of demography and culture, rather than broad repression. He notes that obscenity law is in fact anything but a unified historical or theoretical project. Instead, it shifts from a 'medically backed solving of a social problem' to an 'aesthetically grounded procedure whereby works can be obscene, yet also of literary merit and thus legally publishable for the public good.'

The growing freedoms of the press during the late eighteenth and early nineteenth centuries, and the story of how the press liberated itself from control, is well documented by *Politics and the Press 1780-1850* (1949), by Arthur Aspinall. Aspinall stresses the affects of industrialisation and education on the populace. He notes that the number of people who could exercise judgement on the government of the day, and on public affairs generally, had a significant effect on the growth of press rights and wider press legislation. The effect of this was the growth of independent newspapers and pamphlets which, as we will see later, set

out to challenge oppression, injustice and the powers of church and state. A. J. Lee's *The Origins of the Popular Press, 1855-1914* argues that the early 'struggles' for freedom of the press in the nineteenth century were 'fought out on largely liberal terms'⁵⁷, he notes that '[h]istorically the struggle of the press in Britain was conducted in the rhetoric of liberals and by liberals'. As I will demonstrate, this was not an accurate description of events. He goes on to discuss how, as the press grew into a large scale industry, the 'early liberal vision of a cheap press' became hampered. Stephen Koss provides a useful overview in *The Rise and Fall of the Political Press in Britain* (1981) in two volumes. Volume one focuses exclusively on the nineteenth century with the second exploring reverberating themes of the twentieth century. The main theme to which Koss gives attention is that of the relationship between newspapers and Parliament, highlighting the role that the press played in serving the specific interests of those members of Parliament, either directly or indirectly, that were willing to 'support' their political stance. He highlights in particular the massive expansion of the newspaper industry after the repeal of stamp duties during the 1850s noting that the press emerged increasingly as part of the established political culture during this time.

The growth of Radicalism and Secularism during the nineteenth century, and the effects such groups had on free speech, is charted in great detail by Edward Royle, in *Radicals, Secularists and Republicans* (1980). In his work, Royle sets out the institutional history of secularism before he goes on to explore the structure of the secularist movement and its ideas. He concludes this work with a detailed study of the campaigns in which the secularist movement became involved highlighting the unique nature of the secularist viewpoint and the effects of these campaigns on contemporary Victorian society. Continuing this theme,

⁵⁷ A. J. Lee, *Origins of the Popular Press, 1855-1914* (London: Croom Helm, 1976), p. 15.

but in a more geographically restricted manner, Iain McCalman's *Radical Underworld. Prophets, Revolutionaries and Pornographers in London, 1795-1840*, (1988), traces the growth of the underground revolutionary republican Spensonian society, founded by Thomas Spence. In addition to highlighting the factors that created what was to become a 'cohesive political force', McCalman surveys the ideas and actions of the underworld, with particular attention given to the alehouse debating clubs and blasphemous chapels. In a more biographical work, Arthur Calder-Marshall's *Lewd Blasphemous and Obscene* (1972), surveys the 'trials and tribulations' of some of the nineteenth century's most notable radicals and free speech advocates, noting some of the more infamous and obscure events surrounding the lives of Hone, Carlile, Holyoake amongst others.

Frede Castberg's *Freedom of Speech in the West* (1960), deviates slightly from the works noted above in that it is a comparative study of freedom of speech in France, the then Federal Republic of Germany and the United States of America. Castberg highlights the relative similarities in the constitutional make up that protects free speech in each of the countries mentioned. However, he also points out the many differences in which all of these states deviate in one form or another, from the principles of freedom enshrined in their prospective constitutions. In essence, Castberg's book is a comparative study of public law, mainly concerned with rules that affect freedom of speech

Although Francesco Ruffini states in the opening chapter of *Religious Liberty*, (1912) that religious liberty is distinct from other forms of liberty, I feel that I must include this volume in my review, as an understanding of Church and State relations is crucial to my research, and it is for this reason that I give it a brief mention. In a similar vein to the volumes noted above, Ruffini highlights the chronological and geographical development of religious liberty, from the 'precursors' of classical antiquity, through to the nineteenth century; scanning Europe in his analysis of the development of religious liberty, and the forces posed against it.

One recent addition to the wealth of literature on free speech and the development of the free press is *The Powers of the Press* (1996), by Aled Jones. Focusing heavily on the development of the 'mass communications media' during the nineteenth century, Jones explores the impact of this industry on the social, cultural and political life of Victorian England. He goes on to eloquently detail how the press challenged many aspects of the Victorian social and moral order and charts the tensions between this and the expansion of the commercial press industry and the prevailing moral imperatives. Lucy Brown in her *Victorian News and Newspapers*, (1985) notes in the opening section of the work that the book is about 'news' 'where it came from, how it was received, how it was handled, distributed and presented.' Looking at the role of technology and the character of reporting as well as the impact of advertising and the scope of news reporting, Brown notes that it was not until the latter part of the nineteenth century, after the repeal of the final stamp tax, that the newspaper became an established part of the 'normal furniture' of life for all social classes of the age.

Although the works noted above have provided me with a wealth of references and pointers to primary material, an overwhelming feature of the works noted thus far denote a lack of historical contextual subtlety or significant reference to 'linguistic artefact'. They take, with one or two exceptions, a predominantly 'great thinkers' approach to the study of free speech, either in terms of charting the development of 'grand ideas' or focusing narrowly on particular individuals or events. Moreover, much of the work thus noted lacks any critical analysis particularly in terms of the development of particular ideas and their articulation. A number of notable exceptions however, do exist.

Patricia Hollis in *The Pauper Press, A Study in Working-class Radicalism of the 1830s* (1970), and Joel Wiener's *The War of the Unstamped* (1969) highlight the way that working-class radicalism impacted on radical journalism and political activities around issues of reform but then developed into a more sophisticated critical anti-capitalist tone. Both Hollis and Wiener are successful in providing good examples of the background and theoretical underpinning of working-class

radicalism along with their articulations in the radical working-class press. Although these two works are of great merit, they present mainly an historical account that is centred on the debates and struggles in the 1830s and although they do offer some insight into aspects of theory, a detailed analysis of the political theories of free speech is lacking. This said, Wiener's and Hollis's work should be seen as major contributions to this field, contributions that I have drawn from and hope to build upon and develop within the context of this work. Another work that provides a welcome exception to the largely idealistic view of press history is provided by James Curran and Jean Seaton and entitled *Power Without Responsibility* (1997). In this work the authors chart in great detail the development of the commercial press and its gradual monopolisation by the middle class. More importantly, however, this work attacks many of the assumptions and notions of works hitherto cited, most prominent of which is that the press itself was (and still is) a defender of liberty, a 'fourth estate' which has the peoples' interests at heart and serves them unswervingly. This critical historical account of the development of a bourgeois press which acts as a mechanism for social control of the working class is another fine example of the break from traditional interpretations of press history. In an earlier work, entitled *Newspaper History: from the Seventeenth Century to the Present Day* (1978), Curran, along with his co-editors – George Boyce and Pauline Wingate, provide a collection of essays that also take a more historically critical account of the development of the press through history. The work provides a collection of essays that look at historical processes and contexts and provide contextual and political evidence of the practices of the British Newspaper trade. The book not only focuses on 'society' and 'economy', but also on the values and belief systems of the newspaper elites and their minions. The work is of great value for its political insight into the dynamics of the development of the newspaper press as it offers a departure in terms of its analysis from other more traditional works noted above. Its departure is typified in its emphasis on political economy and culture and, as such, some of the themes emerging within this thesis have taken inspiration from the analyses represented in these volumes. As we will see, these

latter works in particular have provided me with inspiration in so far as they have sought explanations of the struggle for freedom of the press that focus on social, economic and cultural factors rather than on individual actors or romanticised versions of press history. Their main drawback is the relative lack of attention given to the detail of the political philosophies of free speech and it is this deficit that I hope to build upon in this work.

Despite the difficulties in much of the literature hitherto cited, there is no doubt that the works mentioned above have provided this researcher with essential material and references for the thesis, and for this I am grateful. However, as noted above, I feel that this literature in particular provides me with a *raison d'être* for my research, as the majority of this work, although comprehensive, makes no attempt to view free speech in terms of both philosophy *and* history which in my view, is crucial if a thorough understanding of free speech is to be gained.

CHAPTER TWO

Historical Context

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- 1: Introduction
 - 2: Historical Narrative
 - 3: The Emergence of the Enlightenment
 - 4: Conclusion
- Summary

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[...] the writings of the pamphleteers and in the demands of political and religious minorities are to be discovered the seeds from which later grew the doctrines of religious toleration, democracy in government and liberty of the press.¹

2.1: Introduction

The short quote above simply encapsulates a view about the development of freedom of the press as emerging out of the political and religious turmoil of the sixteenth and seventeenth centuries. It is the intention of this chapter to examine this process and look more closely at factors that impacted on the struggles for freedom of speech during the nineteenth century. Moreover, given that some historical insight is posited as a key methodological component of the analysis of this work, it is only fitting that some examination is given to those circumstances and events that provide a historical precursor to the political activity around freedom of speech during the nineteenth century. This chapter will provide such a precursor by exploring, albeit briefly, the social and political contexts that historically underpin struggles for freedom of speech during the nineteenth century.

This historical overview, as well as providing a genuine historical flavour to this work, also serves as a methodological tool by highlighting key forces and effects which impacted on struggles during the nineteenth century, in terms of both the influence of philosophical ideas, from individuals such as Milton and Locke, and the sense of historical perspective that was prevalent during the nineteenth

¹ F. S. Siebert, *Freedom of the Press in England 1476-1776* (Urbana: University of Illinois Press, 1952), p. 232.

century. It is my intention then, to capture the sense of historical process and some of the philosophical influences that were carried over into struggles during the nineteenth century. In noting this dynamic, I am providing a basis from which a closer analysis of free speech is to be made, and more importantly, a notion of the historical character of the struggle for free speech.

The structure of the chapter will take a broadly chronological approach, and cover a relatively vast historical space; obviously in this short space, only a cursory account of historical events and processes can be provided; however, it is hoped that this account will provide a suitable horizon from which a clear sense of perspective can be gained. The first section of the chapter will briefly sketch key assertions of free speech that emerged after the invention of the printing press in 1476. Most notably those defences that emerged following the Reformation and during the onset of the Enlightenment. Although the motivation for this chapter is mainly methodological, i.e. providing historical context, this historical context should not solely be perceived as a means of understanding processes during the nineteenth century. What this chapter also highlights is the nature of the context in which free speech was starting to become interwoven with new arguments relating to the emergence of new forms of social systems and the disintegration of feudalism, as well as the questioning of established forms of religious worship and the belief in human progress in matters of politics and economics. In addition to highlighting the measures and arguments that sought to advance free speech and some of the more potent arguments and examples of dissent which sought to curb censorial powers over this period, the chapter will also highlight the respective measures undertaken by Censors, Monarchs and Governments to curb freedom of speech and press freedom up until around 1779.

2.2: Historical Narrative

Before the onset of Enlightenment thinking, which reformed the intellectual landscape with ideas of natural inalienable rights, and justification for religious and political toleration, intolerance of dissenting religious opinions was

commonplace. Such intolerance is partially reflected in the struggle to control the press and curtail the influence of dangerous dissenting religious and political ideas. As we will see, struggles for press freedom were fought out over many years of political turmoil in which religious and political power shifted between Catholicism and Protestantism. As King notes '[r]eligious truth was assumed to be so self-evident that opposition to it was taken to imply evil, not error. During the Reformation this view was owned not only by Catholics, but also by the early Protestants'.² This point is emphasised below as I start this historical narrative at the Reformation.

Since William Caxton introduced printing in England in 1476 restraints upon printing have also varied in accordance with these shifting power struggles. When Henry VII came to the throne in 1485 he appointed Peter Actors as his Royal Stationer and the first official mechanism of censorship was commissioned, as it was the responsibility of the Stationer to grant patents only to selected printers in the name of the Crown. In 1538, supervised by the King, the first licensing proclamation to control and censor printing was drawn up which covered all books printed in English. All printing had to be officially viewed so as to determine its 'worth' prior to publication. This form of prior censorship continued in various forms until the end of the licensing system in 1695, so it is worth considering its development in some detail.

Over a number of years and as the number of printers grew, they organised themselves into what came to be known as The Stationers' Company, which was given its Royal charter in 1557. Essentially the role of the Stationers' Company was self censorship, as all books would be examined and licensed by the

² P. King, *Toleration*. (London: George Allen & Unwin Ltd. 1976), p. 76.

stationers prior to publication. As Thomas³ notes ‘The granting of this charter to the Stationers’ Company was described with a spirit of philistinism which made it quite clear that, on the part of the authorities, this was a recognition of the dangers of literature rather than of its usefulness or dignity [...]’ Fines and prison sentences were imposed upon those who published unlicensed material or who had presses which were not registered and licensed by the Stationers’ Company. For more serious transgressions of the code, in which blasphemous and seditious literature was produced, the guilty parties were penalised by execution. Despite such high penalties for avoiding licensing, many printers saw the value of what was seen by the authorities as ‘blasphemous’ or ‘dissenting’ literature as an expression of their beliefs. It is evident here that state intolerance of different religious beliefs, mainly at this time Protestantism, was backed up by state sanction, prosecution and even persecution.

After the death of Queen Mary (1516-1558) and the accession of Elizabeth I (1533- 1603) in 1558, attempts were made to increase the existing powers over printing and in essence tighten the grip of censorship. The coronation of Elizabeth I also meant an end to Catholic rule, which England had witnessed under king Henry the VIII prior to the Reformation and Queen Mary during her short reign. However, Elizabeth was as intolerant of Catholicism as her father and grandfather were of Protestantism. This intolerance was reflected in Elizabethan press legislation, as under Elizabeth, England witnessed controls that would set the scene for press regulation for many years. However, as Hill notes, print also spread ideas of the Reformation throughout Europe⁴ as well as posing a threat to the established order. The threat of foreign Catholic intervention from France or

³ D. Thomas, *A Long Time Burning; The History of Literary Censorship in England* (London: Routledge & Kegan Paul, 1969), p. 9.

⁴ C. Hill, *England’s Turning Point, Essays in 17th Century English History* (London: Bookmarks Ltd. 1998), p. 183.

Spain, and the possibility of a Puritan revolt within English borders provided the justification for the extension and imposition of censorship legislation, as it was thought that only with such an extension of legislative powers could political stability be maintained:

The Tudor policy of strict control over the press in the interest of safety of the state was maintained throughout the sixteenth century. [...] the English Sovereigns acted upon the principle that the peace of the realm demanded the suppression of all dissenting opinion [...] Neither Parliament, the printers nor public opinion such as it was offered any appreciable resistance to the aggrandisement of the crown.⁵

The form and articulation of these restrictions are numerous; however, it is important for this survey to highlight the main strands of legislation. The most important Elizabethan ordinance came in the form of the 1559 Injunction, the main elements of which were:

1. All new printed material must be submitted before publication to either the Queen, six of the Privy Council, an ecclesiastical judge, or to the Chancellor of one of the Universities.
2. Plays, pamphlets and ballads should be submitted for licence to print to the three ecclesiastical commissioners of London.
3. If not forbidden by any of the three ecclesiastical commissioners, reprints of works on government and religion were permitted after inspection by the above.

⁵ F. S. Siebert, *Freedom of the Press in England 1476 – 1776: the Rise and Decline of Government Controls* (Urbana: University of Illinois Press, 1952), p. 25.

4. The names of the licensers should be added to the end of every work as confirmation of their authorisation.⁶

The foremost strands of regulation emanated from the Queen, the Privy Council, then other royal officials, the church hierarchy and ecclesiastical judges, and the Stationers' Company. As a result of the growing number of controls, the printers of the day found themselves surrounded by the ever watchful eyes of those keen to prosecute if they stepped out of line. Moreover, the measure and sophistication of such regulation reflects the force of intolerance which was fed in part by fear of insurrection or even worse, foreign invasion. This being said there was no shortage of printers who risked everything for a pittance to print a religious pamphlet or agitational flyer. The Reformation was not complete and Catholics and Puritans alike practised their religion even though they risked persecution and death for their beliefs. Not only were books and pamphlets burnt openly by advocates of strict controls over print, but many a dissenter was burned at the stake for not following the word of the Protestant church and state. Examples of capital punishment did little to discourage men like Robert Parsons (1546-1610) who wrote the pro Catholic *Christian Directory*, or Edmund Campion, (1540-1581) 'whose missionary zeal included acceptance of the fact that martyrdom for the Catholic faith might be their temporal reward.'⁷ Although Parsons and his secret press were never caught, he organised much Catholic resistance both in England and abroad with a view to restoring Catholicism as the church of England. Edward Campion wrote *Decem Rationes* (Ten Reasons) which heavily criticised the Anglican church and he was eventually found, tortured and executed for his agitation, another example of the acute intolerance of Catholic dissent by the Protestant authorities.

⁶ See Siebert, *Freedom of the Press in England*, pp. 56 & 57.

⁷ Thomas, *A Long Time Burning*, p. 10.

With the number of master printers increasing from eight in 1560 to over thirty by the end of the century,⁸ so the numbers of books and pamphlets that required licensing increased. As the respective authorities could not cope with the growing number of printers requiring licence, Elizabeth empowered other elite groups which could also license the publication of books. The new elite included: the Archbishops of Canterbury and York; the Bishop of London and the Vice Chancellors of Oxford and Cambridge. As we will see the grip of the censor was tightening.

Over time it was becoming increasingly obvious that the regulation of 1559 was insufficient in keeping the writings of dissenters and agitators from the presses and ultimately from the public as growth in printing seemed to go on relentlessly; it was clear that more effective measures needed to be put into place. After much quarrelling over the nature and organisation of the new licensing system, Elizabeth issued the *Star Chamber Decree of 1586*. 'It was the most comprehensive regulation of the press of the entire Tudor period'.⁹ Following the suggestion of Archbishop Whitgift, the Decree placed a limitation on the number of printers, apprentices and presses, and authorised the Stationers' Company with the powers of search and seizure. Also, all books (with the exception of law books and books printed by the Queen's printer) were required to be licensed by the Archbishop of Canterbury and the Bishop of London, whilst law books were licensed by the Justices.¹⁰ In addition to this, no printing could be undertaken outside London, Oxford or Cambridge. The enforcement and administration of the regulations were to be split between the church hierarchy and the Stationers' Company.

⁸ Thomas, *A Long Time Burning*, p. 56.

⁹ Thomas, *A Long Time Burning*, p. 61.

¹⁰ Thomas, *A Long Time Burning*, p. 62.

Although the controls over the press were very stringent during the reign of Elizabeth, the number of transgressions against the system increased. Such transgressions were partly fed by the threat of foreign invasion, and although this threat subsided intermittently during Elizabeth's reign, the rumblings of revolt remained from within English borders throughout her reign. Such rumblings emanated often from the printers themselves, mainly for economic reasons; the Puritans and Catholics for religious reasons and from Parliament itself for political reasons. It was clear that the system was beginning to crack under the weight of pressure from these three sources. However, even given the number of pressures upon the system there can be no underestimating the importance of this period of Elizabeth's reign in terms of the vehemence and ferocity of censorship legislation; as Siebert points out, 'Elizabeth's reign was the high point of the entire three-hundred year period [in] the number and variety of controls, stringency of enforcement, and general compliance with regulations.'¹¹ As we will see, such a spirit of control over the press and almost paranoid fear of insurrection is well echoed during the nineteenth century

After the death of Elizabeth in 1603, the Tudor system of censorship was passed on to the Stuarts. The licensing system which had been relatively successful (despite many attacks) in the Tudor period was now starting to strain under the social, economic and political changes that were taking place under the Stuarts. However, the anxiety of those who sought control of the press remained, such was their concern over printing, partly due to the increased amounts of literature being produced, and partly due to the growing ineffectiveness of the inherited Tudor legislation. As a result, the 1637 *Decree of the Star Chamber* was proclaimed. Siebert notes that by the 'decree of 1637 all printing was placed in its

¹¹ Siebert, *Freedom of the Press in England*, p. 2.

hands. Printing outside the company was forbidden. The identification of the interests of the crown with those of the Stationers Company was complete.’¹²

These controls were in place only a few years when the Long Parliament took over control of printing in 1640. As expected, as the power base of England shifted, so too did the basis on which many of the previous press regulations had rested. The officials of the Stationers’ Company, set up by Royal decree, owed their powers to the Monarch, and as power shifted from the Monarch to Parliament, so did their allegiance. However, such a shift could not be made without much weakening of its power. In addition to the Stationers’ Company, the other Royal enforcement agency of the press, the Star Chamber, was also to succumb to the new shift in power and was eventually abolished in 1641.

Eventually, the chaos evident in the governing structures of the country soon filtered down to the controlling agencies of the burgeoning printing industry and for the first time the printers found themselves with new freedoms to print and publish without fear of punishment. ‘Political and religious controversialists suddenly found the press open to them.’¹³ However, the freedom which they enjoyed was not due to any free-thinking spirit of Parliament but the inability of the weakened enforcement agencies and of Parliament to control printed matter. In a sense we have an emerging notion of pragmatic tolerance, as political and religious turmoil meant that it was becoming no longer expedient, or even possible, to assert controls over the press to the degree that Elizabeth had done a hundred years earlier. However, by 1642 both Houses of Parliament were sufficiently troubled by the increasing glut of seditious literature available that they set up a temporary licensing system and gave enhanced powers of search and seizure to the Stationers’ Company. However, not even the combined activity of

¹² Siebert, *Freedom of the Press in England*, p. 134.

¹³ Thomas, *A Long Time Burning*, p. 173.

the Stationers' Company and both Houses of Parliament could subdue the printers, who were sensing chaos and attempted to take full advantage of the weakening system of restraint. On June 14 1643, spurred on by the weakness of its powers over printing, Parliament issued a new ordinance which would reclaim its powers over the press and regulate printing. Instead of the crown, Parliament would be the authority which would oversee printing in alliance with the Stationers' Company. Under the new act, all books, pamphlets and papers etc. were required to be licensed by 'persons appointed by Parliament and be entered into the Register at Stationers' Hall.' This new Order was the last straw for men such as John Milton, who, following his *Doctrine of Discipline and Divorce* (1643) (published without licence and unregistered) attacked the whole system of pre-licensing in his work entitled *Areopagitica: A Speech for the Liberty of Unlicensed Printing* (1644).

Milton's original career intentions were to become a poet; however, the political and religious turmoil of the English Civil wars and the interregnum, drew him into the sphere of public life. Although it went generally unheeded, Milton's argument in *Areopagitica* can be viewed as one of the first written defences of free speech, as much of the literature before Milton's defence of freedom to publish was of a seditious or heretical nature. The main stimulus of Milton's position stems from his belief that ultimate authority remains in the hands of the people and that they should resist tyrannical government. Much of Milton's justification of free speech has been connected to the later philosophical thread of John Stuart Mill, particularly in the realms of the uncovering of error and the search for truth in a 'free and open encounter'; also, as Arblaster notes, in terms

of the recognition that accepted truths degenerate into dead dogmas, the connection with J.S. Mill is established.¹⁴

Not only did Milton argue that censorship in the form of pre-licensing did no good, but also that such measures hindered the acquisition of knowledge in that censorship aids:

[...] the discouragement of all learning and the stop of truth, not only by disexercising and blunting our abilities in what we know already, but by hindering and cropping the discovery that might yet be yet further made, both in religious and in civil wisdom.¹⁵

He continues:

If it be desired to know the immediate cause of all this free writing and free speaking, there cannot be assigned a truer than your own mild and free humane government; it is the liberty, Lords and Commons, which your own valorous and happy counsels have purchased us, liberty which is the nurse of all great wits; this is that which hath rarified and enlightened our spirits like the influence of heaven; this is that which hath enfranchised, enlarged and lifted up our apprehensions degrees above themselves. That our hearts are now more capacious, our thoughts more erected to the search and expectation of greatest and exactest things, is the issue of your own virtue propagated in us; ye cannot suppress that unless ye reinforce an abrogated and merciless law [...]. Give me the liberty to know, to utter, to argue freely according to conscience, above all liberties.¹⁶

The notion of liberty of printing then, was starting to emerge in dissenting discourses and to be articulated within the realms of ideas as well as pragmatic politics.

¹⁴ A. Arblaster, *The Rise and Fall of Western Liberalism* (Oxford: Basil Blackwell, 1984), p. 156.

¹⁵ J. Milton, *Areopagitica: A Speech for the Liberty of Unlicensed Printing* (Oxford: Clarendon Press, 1973 [1644]), p. 5.

¹⁶ Milton, *Areopagitica*, p. 37-38.

Another prominent figure that championed the cause of anti-censorship at this time was John Lilburne. Known widely as a ‘great libeller’ Lilburne was a prominent advocate of freedom of the press and much of his activities were concentrated upon criticising the licensing system and particularly the Stationers’ Company, of which he wrote:

[...] that insufferable, unjust and tyrannical monopoly of printing, whereby a great company of the very same Malignant Fellows that *Canterbury* and his Malignant party engaged in their Arbitrary designs, against both the Peoples and Parliaments just privileges are invested with an arbitrary unlimited *Power*, even by a general Ordinance of Parliament, to print, divulge and disperse whatsoever Books, Pamphlets and Libels they please, though they be full of *Lyes* and tend to the poysoning of the Kingdom with unjust and Tyrannical Principles.¹⁷

Lilburne was in essence criticising the corrupt monopoly over printing with which the Stationers’ Company was empowered. He argued that such monopolisation and control of printing ‘hindered’ freedom in matters pertaining to discussion and thought. He frequently found himself in trouble over his publications and was eventually brought to trial for publishing ‘treasonable and venomous books’ in 1649. Fortunately for him, he was subsequently acquitted by a ‘sympathetic’ jury.¹⁸

After the execution of Charles I and the abolition of the House of Lords in 1649, the Commonwealth was set up with its authority in the hands of the Council of State, with its power based within the Army. From the period of the Long Parliament to 1660, the degree and type of legislation the press was subject to varied from almost complete freedom of the press in the early years of the Long Parliament to the strict curbs under the Council of State. After the Restoration

¹⁷ J. Lilburne. Cited in Clyde, *The Struggle for Freedom of the Press*, p. 106.

¹⁸ See Clyde, *The Struggle for Freedom of the Press*, pp. 193-194.

and the accession of Charles II to the throne, a new law which would mean a return to censorship via a pre-licensing system was enacted. The Licensing Act of 1662 was almost identical to the Act of 1637, and ran until 1679 when it was repealed until its re-enactment in 1685. However, even though the formal licensing system was more relaxed until 1679, criminal prosecutions could still be made against obscene, seditious or blasphemous libels. Charles II made several attempts to reinvigorate prerogative powers over the control of printing but was mostly unsuccessful, as Parliamentary jurisdiction by this time was too firmly entrenched. One prominent supporter of Charles II was Sir Roger L'Estrange, who in his *Considerations and Proposals in Order to the Regulation of the Press* (1663) advocated a more severe enforcement and extension of the Licensing Act and argued that the number of Master Printers be reduced from 60 to 20.¹⁹ As curious as it may seem now, but indicative of the political turmoil of the time, L'Estrange, an advocate of stricter press controls, found himself on numerous occasions imprisoned for his political views and writings.

Obviously the political chaos and disorder of this period in English history warrants a great deal of attention and to skirt over this period is not to do it justice. Suffice it to say, the political disorder of the time is reflected in legislation towards the press. Rolph²⁰ describes this period of censorship as having the character of a pendulum, what was orthodoxy to one regime or government was heresy to the next. However, Rolph's analysis lacks any real historical depth as he fails to provide an adequate explanation of why the pendulum swung in the way it did. As I demonstrate below, the emerging economic dimension of print as well as the expansion of commercial interests

¹⁹ A. L. Haight, & C. B. Grannis, *Banned Books, 387 B.C. to 1978 A.D.* (New York: R.R. Bowker, 1978).

²⁰ C. H. Rolph, *Books in the Dock* (London: Andre Deutsch Ltd. 1969).

impacts greatly on the shape and character of the struggle for freedom of the press.

After the zeal and to some degree efficiency of the Tudors and the schizophrenia of the Stuart period, the eighteenth century saw a turning point in censorship legislation. Although it was generally agreed that political stability depended to a large degree upon government control of the press, the methods used prior to the turn of the century were seen by most as outdated and unworkable. Even the wealthier printers of the day longed for regulation. The powers of the Stationers' Company, which had lost its authority at the end of the previous century, were missed greatly by those printers who benefited from its hegemony, as their trade was being undermined by amateurs. It is clear here that the economic dimension of printing is beginning to emerge, with the increased numbers of 'amateur' printers now starting to impact on the trade of more established printers. The Regulation of Printing Act which had been adopted by Parliament in 1662, which gave the responsibility of control and regulation of the press to specific principal secretaries of state, and which was gradually allowed to lapse, failed to be revived (although many efforts were made) towards the end of the seventeenth century. However, the tone and target of the act is clear:

No person shall presume to print any heretical, seditious, schismatical, or offensive books or pamphlets wherein any doctrine of opinion shall be asserted or maintained which is contrary to the Christian faith, or the doctrine and discipline of the Church of England, or which shall or may tend to be the scandal of religion, or the Church, or the Government or Governors of the Church, State or Commonwealth or of corporation or particular person or persons whatever.²¹

Even though the licensing regulation was severe, it was, as noted, by no means efficient. A new more proficient system of regulation was necessary in order to

²¹ Cited in Rolph, *Books in the Dock*, p. 36.

keep check on the growing amount of seditious and blasphemous pamphlets and newspapers circulating at that time. The eventual method of control which was devised by Queen Anne's ministers, not only placed restrictions upon printed matter but also raised additional financial revenue for the government. The revenue act of 1710 for the first time imposed a tax on printed matter. From this act the first Stamp Act, enacted in 1712, was used for the purpose of controlling 'licentious, schismatical and scandalous publications.'²² The tax would curb those 'cheap' publications which depended upon sensationalism and scandal. Rather than put the onus on the pamphleteers and printers, those who wished to purchase such material would have to pay the tax. Stamp office registration was required on all newspapers and pamphlets printed in London. In addition to this, each publication was required to contain the name and address of the publisher for identification, with a penalty of £20 payable for non-compliance. The new stamp tax seemed to have had the desired affect of limiting circulation of certain publications and raising finances for the treasury. However, due to specific loopholes in the law, publications of less than six pages were exempt from taxation. This loophole and others like it was soon closed by Walpole in 1724 when he became First Lord of the Treasury and Chancellor of the Exchequer. The stamp tax was raised several times through the century with much success. The 'hawkers' and 'peddlers' found it increasingly difficult to sell their books, papers and pamphlets at a profit. As we will see, the stamp tax was the bane of radicals and dissenters during the nineteenth century.

It was during this period of new measures which sought control of the press, that the first recorded instance of a conviction based upon grounds of obscene libel took place. A book by Edmund Curll, entitled *Venus in the Cloister: or The Nun in Her Smock* (1724), provided a fictional account of 'lewd' behaviour in a

²² Siebert, *Freedom of the Press in England*, p. 309.

convent. The book was subsequently thought to be a threat to public morality, and thus a threat to the King's peace. The Attorney General noted:

This is an obscene libel, and an offence at common law. It tends to corrupt the morals of the King's subjects [...] I do not insist that every immoral act is indictable, such as telling a lie or the like; but if it is destructive of morality in general, if it does or may affect the King's subjects, then it is an offence of a public nature [...].²³

Thus, as Rolph notes, the idea of 'obscene libel' had arrived. That is not to say that 'lewd' and 'obscene' literature had not existed before the trial of Curll, only that the perceived threat to public morality had not been addressed by the Kings Bench before this period.²⁴ Until the Obscene Publications Act of 1959, the English Law of Obscene Libel, prompted by the case of Edmund Curll, remained essential as a weapon for controlling all literature. Other works which courted controversy during the earlier part of the eighteenth century include: Cleland's *Fanny Hill*, Cheyne's *Pamela*, Sterne's *Tristram Shandy*, Henry Fielding's *Tom Jones* and *Amelia*, Daniel Defoe's *Robinson Crusoe* and Jonathan Swift's *Gulliver's Travels*, all these works caused a stir to say the least.

Fiction in general, whether it be blatantly 'obscene' or merely 'titillating' was being increasingly viewed as harmful. Public moralist John Hawksworth in his magazine the *Adventurer* warns his readers of the dangers of such material in that it promotes evil rather than good. The moral backlash no longer continued in a puritan vein, it was just as vehement from non puritans such as Richardson, Johnson and Hawksworth to name but a few.

²³ Cited in Rolph, *Books in the Dock*, p. 55.

²⁴ In 1692 for example the 'Society for the Reformation of Manners' was formed to stop the 'execrable Impieties of our most Scandalous playhouses, those nurseries of Vice and Prophaness' (Cited Thomas, *A Long Time Burning*, p. 74). Until its demise in 1738, the Society for the Reformation of Manners did its utmost to create a 'high moral climate' which the governments of the day were only too willing to respond to.

Any survey of the struggle against censorship would not be complete without a brief mention of John Wilkes (1725-1797). Wilkes was the editor of the *North Briton* periodical (est. 1762) and intermittent member of Parliament between 1757-1790. Wilkes was a vehement critic of the Tory government and the ferocity of his attacks on the Bute administration heavily influenced Bute's eventual decision to resign. Thomas notes that the importance of Wilkes's political activity cannot be overestimated as 'in a comparatively short period of time Wilkes and his paper had created a substantial body of opinion which was not merely hostile to Bute's administration, but which regarded freedom of the press from political restraint as an end worth fighting for in itself.'²⁵ Steven Koss also notes that the controversy over Wilkes's agitation 'raised fundamental issues about press freedom that soon echoes from the perimeters of the English speaking world.'²⁶

In the famous *North Briton* No. 45 Wilkes attacked the King's speech on the 'Peace of Paris' arguing that the King was nothing more than a mouthpiece of the ministry and that Britain had deserted its allies in the war between France and Spain. Following this attack, a long drawn out battle between government supporters and Wilkes's supporters ensued. Wilkes was eventually arrested but then released soon after citing Parliamentary privilege making him immune from prosecution. In 1764 however, he was tried in his absence, found guilty of sedition and expelled from Parliament. However, after the publication of the *Essay on Women*, the authorities made further attempts to convict Wilkes; and after spending time abroad, he returned to England and he was eventually arrested for publishing both the *Essay on Women* and *North Briton*, No. 45, which was considered both blasphemous and obscene. He was charged and sentenced to prison for a total of twenty two months and fined one thousand pounds.

²⁵ Thomas, *A Long Time Burning*, p. 92.

²⁶ S. Koss, *The Rise and Fall of the Political Press in Britain* (London: Hamilton, 1981), p. 33.

In attacking the government in the pages of the *North Briton* in such a way and arguing against prosecution, Wilkes was also arguing for liberty of speech as well as true political representation. In doing this Wilkes's writing started to create a body of opinion which sought to question the whole mechanism and system of government at that time as well as to further the cause of liberty. The changing perception of public opinion was starting to recognise the value of the press in generating political intelligence, and as far as the people were concerned this was a good thing. The authorities however, viewed it differently. Whilst newspapers and pamphlets might be of value to those men of breeding and standing, the notion of a press for the so-called lower orders, a press that attacked government hypocrisy and mismanagement was certainly not. Indeed, as Patricia Hollis notes, during the 1770's Wilkes's struggle had established the right of newspapers to report Parliamentary debates;²⁷ thus the people were now in a position to be better informed on matters concerning their government. The Wilkes affair helped raise the profile of issues that had their roots in the revolutions of America and France. Popular representation and liberty of the press were two of the most important rights that started to influence political activity at the end of the eighteenth century. Wilkes was a key actor in that he and his followers started to question the nature of power and governance in a manner not seen in Britain before; moreover as we shall see:

the controversy surrounding him had popularised the notion of 'liberty' and, more specifically, had raised the question of whether Parliament was as representative of the wishes of the electorate - to say nothing of the disenfranchised majority - as it ought to be. [...] This question more than any other determined the nature of political censorship for over sixty years.²⁸

²⁷ Hollis, *The Pauper Press*, p. 28.

²⁸ Thomas, *A Long Time Burning*, p. 95.

Before, however, we move on to examine censorship and the philosophy and praxis of freedom of speech during the nineteenth century, some discussion of the pertinent intellectual developments during the enlightenment is necessary. This is dealt with in the next sections devoted to the emergence of Enlightenment thought and the rise of toleration.

2.3: The Emergence of the Enlightenment

The Enlightenment, with its emphasis on rationality and progress, brought with it more fully rounded, systematic and coherent arguments for freedom of speech.²⁹ Again it is not to say that these arguments stand alone outside of particular philosophical or historical paradigms, but fit within broader emerging political, economic and philosophical beliefs, as well as sometimes emerging as a particular reaction to oppression or injustice. It is clear that the political and religious turmoil of the sixteenth, seventeenth and eighteenth centuries did much to complicate the way in which both the mechanisms of censorship and the reactions against controls manifested themselves. Along with such turmoil, we can also see how such chaos was reflected in the extent of religious and political intolerance, and in part explained by fear of political instability and revolution. Also highlighted in the previous section are examples of how such turmoil impacted on the range, weight and importance of authority's control over the press. Clearly, the forces that sought to curb and counter these restrictions on the press reflected the massive changes taking place in politics, religion and society during these times. However, it is necessary to understand why such processes occurred when they did and what the driving forces of such processes were. For this, we briefly return to the Reformation.

²⁹ See Bury, *A History of Freedom of Thought*; and Robertson, *A Short History of Free Thought*. Although I have criticised the romanticism and lack of critique evident in the work of writers such as Bury and Robertson, accounts such as this can provide useful examples of the force of rationalist arguments against oppression.

The wide ranging impact of the Reformation cannot be overestimated, as the seemingly arbitrary reorientation of religious worship raised questions about the nature of governance being more forged by natural forces rather than the law of God. Increasingly the notion of the Divine Right of Kings was coming under scrutiny by those that questioned the political chaos of the sixteenth and seventeenth centuries. Moreover, after the intensity of battles between Protestantism (which was now splintering into a diversity of factions) and Catholicism, it became evident to those in power that a certain measure of tolerance was necessary to maintain order within national boundaries and lessen the prospect of conflict with foreign states. The foundations of toleration then stem from the emergence of a diversity of religious opinions after the sixteenth century Reformation and the gradual questioning of the Divine Right of Kings. Moreover, the rise of various forms of Protestantism across Europe, coupled with the gradual awareness that unfavourable religious opinions could not be changed forcibly, (an idea that emerged from Voltaire) meant that religious tolerance was the best *pragmatic* response to increasingly chaotic political events and processes. This sentiment is echoed by Christopher Hill who suggests that the rise of toleration was a 'practical response to changing social, economic and political conditions during the seventeenth century'.³⁰ Given the gradual fragmentation of established power structures, and the emergence of new ones, Hill argues that only when the tensions that emerge as a result of this transformation are fought out to the point of exhaustion, and it eventually becomes apparent that no side can win outright, is a form of toleration accepted. He notes that the:

breakdown of one type of authoritarianism tends to lead to the temporary victory of another authoritarianism. Only when both sides have exhausted themselves can the possibility of neither winning

³⁰ In 'Toleration in Seventeenth-Century England', in S. Mendus, ed. *The Politics of Toleration. Tolerance and Intolerance in Modern Life* (Edinburgh: Edinburgh University Press, 1999), p. 27.

outright be grasped, and the small voice of reason make itself heard.³¹

Thus religious tolerance emerged as it gradually became apparent that religious persecution was simply not prudent, as deeply held religious convictions could not be changed even by coercion and torture. Toleration then is accepted, albeit reluctantly, by the recognition that forcible conversion of religious belief was unrealisable.

However, there is more to this historical picture, as the seeds of toleration not only stemmed from the stand off between competing religious factions, but also from a rapidly advancing economic and intellectual climate. As Hill points out, the increasing awareness of other cultures and faiths that came along with the beginnings of world trade, especially in the Middle East and Asia during the sixteenth and seventeenth centuries, meant that it became necessary to tolerate different cultures and belief systems. Given that international trade rested on an acceptance (albeit reluctantly) of foreign cultures and religions it became crucial for those wishing to exploit the expansion of markets to accept that of which they would almost certainly have been intolerant of previously. Therefore, it was necessary to accept those differences, be they in religious belief or cultural milieu, as the opportunity to expand trade and commercial links could not be missed. Thus the contextual historical backdrop of the emergence of toleration was in place - all that was necessary now, was the intellectual ammunition with which to further promote tolerance.

During the early seventeenth century the leading thinkers of the day were starting to view humanity as being able to shape its own destiny. Moreover, the rapid progress of scientific thinking influenced the belief that man, not God, was the master of his domain. The natural world was also to be mastered and the

³¹ Hill, 'Toleration in Seventeenth-Century England', p. 42.

dominance of human intellect and industry over superstition and irrationality was necessary for the benefit of society. Faith in human judgement in all human affairs was asserted; man (it was argued) following an emerging rational dynamic, was now in a position to improve the lot of the mankind; the Enlightenment was here.

From this period onwards, we see thinkers such as: Bacon (1561-1626), Hobbes (1588-1679) and Descartes (1596-1650), through to Locke (1632-1704); Voltaire (1694-1778); Hume (1711-1776); Condorcet (1743-1794) and Davy (1778-1829) amongst others, forging Enlightenment thinking and providing the intellectual ammunition by which mankind could shape its own destiny based upon rational principles and actions. During the Enlightenment, the search for knowledge and the move to better the circumstances of human existence were increasingly being placed within the realms of the mortal. Questions were raised concerning the relevance of recognising a 'spiritual architect' in human affairs. For the first time in history man was beginning to break free of the chains of religion and carving out his own destiny based upon rational thought and understanding of the world around him. Scientific inquiry and the attempt to understand the world in real instead of spiritual terms was a fundamental catalyst in the development of human understanding during the years of the Enlightenment. Such thinking impacted on politics, economics, science and religion for the next three hundred years. Human intellect was increasingly being perceived as the centrepiece for all decisions regarding the affairs of mankind.

Along with this wave of optimism about the human intellect, came a revolution in the thinking behind the organisation of society along a more rationally guided plane. The idea that tradition, which was becoming viewed as that which engendered the stagnation of society, and which was largely backed up by religious foundations, should provide the motor force for society was increasingly being brought into question. Old authorities were being scrutinised and new ideas that advocated a restructuring of old institutions were explored. Such ideas were not unsurprisingly greeted without enthusiasm by the church and state authorities,

as any ideas that challenged the basis of power and authority were perceived as dangerous and not to be tolerated.

The emergence of Enlightenment thought then, brought with it notions of doubt about the existing order of things, both in spiritual terms and in relation to politics and society. In religious matters too, orthodoxy was brought into question, and given the turmoil and chaos of the seventeenth century in particular the orthodoxy shifted between degrees of intolerance towards the 'new religion' of doubt. This is an important element in terms of freedom of speech, as when the notion of doubt emerges, with it comes a desire for freedom of opinion. Such freedom is therefore necessary to promote greater understanding and a move towards the truth, as we saw in Chapter One, looking at the typology of the truth argument. The Enlightenment's preoccupation with doubt, and continued questioning of norms, creates a necessity for some articulation of alternative explanations, and with this there comes a basis for freedom of opinion. A key articulation of a 'pragmatic' case for freedom of opinion, can be seen in the work of John Locke, whose ideas on toleration greatly influenced struggles for freedom of speech during the nineteenth century.

Often seen as a key contributor in providing the cornerstone or foundations of liberal thought, Locke, most notably in his *Letters on Toleration*, is influential in studies on toleration. Locke's main argument is that the business of government should be separate from that of the Church. The civil life of individuals, their health and liberty, and the protection of their property should be the sole consideration for government. The *spiritual* considerations of men should be left to themselves and have no consequences for government. Locke argued that it would be absurd for governments to attempt to change the beliefs of individuals in spiritual matters, penalties could not change that which is held in 'their soul'. The forces of government no matter how brutal cannot compel a man into genuine religious belief of any kind. Essentially, any government which attempts to coerce specific beliefs is acting irrationally, as belief according to Locke, is something which is deeply held and cannot be altered by coercion.

The religious context of Locke's argument has to be stressed if one is to understand his particular reasoning. Locke's view is specific in the matter of religious toleration, and as such fits in with the fundamental tenets of religious belief. Deeply held beliefs cannot be coerced into individuals as it negates the fundamental religious concept of faith. As Mendus points out:

[...] its importance here is that religious belief is concerned with salvation, and salvation is to be attained only by genuine belief, not by insincere profession of faith. People can be threatened and coerced into professions of belief; they cannot be coerced into genuine belief.³²

However, it is also rational thinking that allows Locke to accept religious intolerance if it aids civil peace as civil peace is important to protecting the natural rights of man. So as Mendus points out, 'Locke's case is thus a minimalist and pragmatic case against [religious] persecution. It is not a positive case for diversity of religious belief...'³³ Locke was not making any claims for wholesale religious tolerance, only claims against certain specific reasons for religious intolerance.³⁴

Thus a specific or particular case for free speech cannot be heard in the writings of Locke. However, much of the tenets and themes of Locke's philosophical, or as Mendus would say pragmatic justification for free speech, can be traced through to liberal justifications of the nineteenth century. It is often considered

³² S. Mendus, *Toleration and the Limits of Liberalism* (London: Macmillan, 1989), p. 26.

³³ Mendus, *Toleration and the Limits of Liberalism*, p. 26. Mendus goes on to highlight that although many commentators argue that Locke's argument is too historically specific to have any longer lasting impact on toleration outside the religious upheavals of the seventeenth century, Locke's arguments are in fact important in understanding and indeed justifying the nature of toleration in a diverse modern society, especially in terms of moral obligation. She notes that the 'ambitious' moral claims of liberal political theorist have less weight than the rationally based Lockean justification of toleration. Although narrower, such a pragmatic justification of toleration can provide the basis for a more egalitarian defence of toleration. See especially chapter 6.

³⁴ S. Mendus, *Toleration and the Limits of Liberalism*, p. 26.

that John Locke's call for religious toleration is the foundation on which later articulations of free speech are made. These foundations, as we will see, are built upon in liberal thought during the nineteenth century. Particularly resonant in this example, and as we have seen prominent in much Enlightenment thought, is the emphasis upon rationalism as the foundation of liberty and freedom.

2.4: Conclusion

The purpose of this chapter has been to look both at the historical emergence of freedom of speech and the intellectual stimuli that went with it. The importance of recognising the dynamic of the interplay of ideas and events cannot be understated. Clearly, from the time of Henry VII to the concerns of the Bute administration of 1760's, one of the most crucial features of the rise of censorship was fear of political instability at least, and outright revolution at most. Authority of whatever form has always needed to keep a check on the printed word for fear of its effect on stimulating the masses into revolt. And, as we have seen, the availability of printed matter became more and more widespread as literacy rates grew among the population, and the measures and restrictions on the printed word also increased. Whether promoting political instability via attacks on the church or the dissemination of 'obscene' literature which would corrupt the morals of the nation and so affect its political make up, censorship, although not always successful, was seen as necessary in order to maintain the status quo. It is clear that over the last six hundred years of British history, power has not always remained in the same hands, from Catholic monarchs to Puritan overlords; from monarchy to Parliamentary rule, the balance between the various powers has always shifted. One element, however, has remained constant throughout; even though the methods and targets of censorship have changed continually, censorship has proved a constant factor in the history of British rule. Towards the end of the eighteenth century, it was starting to become clear that the struggle for freedom of speech, which was most often exemplified in a free press, was not an issue that should be separated out from other political and economic concerns. Indeed notions of liberty gaining general acceptance within public discourses was

increasing as the political and economic power base of society cracked under the weight of progress and reform. As we will see, movements for greater political representation had explicit references to free speech within their tracts. Soon the struggle for a free press would be enveloped within the wave of change that encompassed the nineteenth century and the political struggles therein. Also the emergence of Enlightenment thinking impacted greatly on ideas that sought to challenge the established order. Rationality and progress in human affairs provided new intellectual ammunition to those who had doubts about the existing order of things.

It has been the purpose of this chapter to pick out some of key elements that have contributed to the history and philosophy of free speech during the nineteenth century. Such an overview has been necessary in order to see the impact of history on some of the important elements that reverberate during nineteenth century struggles for freedom of speech. Elements that include a belief in rational thought as an aid to progress; the emergence of doubt as a catalyst to new ideas about the existing order; the rise of toleration as a pragmatic response to a rapidly changing world; and we see the flip side – the authorities' suspicion of new ideas and their desire to maintain the status quo. So let us now commence, and look at the nineteenth century, in the light of some of the themes raised above. We do this initially by examining the social and political context of nineteenth century arguments for freedom of speech.

Summary

This chapter has served a methodological function in providing an historical precursor to the nineteenth century, highlighting the historical character of freedom of speech and as such asserting that a historical overview is necessary in a work such as this. The chapter traces the emergence of mechanisms of censorship from the Stationers' Company to the Star Chamber and culminates in the stamp tax. In highlighting contributions from Milton and Lilburne, a raw conception of liberty is seen as emerging, which Locke later developed. The contributions from Milton and Locke provide philosophical ammunition for dissenters and freethinkers after the onset of the Enlightenment with its belief in progress and human intellect. Such ideas went on to influence many radicals who took inspiration from them during the eighteenth and nineteenth centuries. The chapter concludes by noting the importance of recognising an historical and intellectual dynamic when examining nineteenth century arguments for freedom of speech.

CHAPTER THREE

Social, Economic and Cultural Context

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- 1: Introduction
- 2: Social, Political and Economic Context
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Summary

CHAPTER THREE

Social, Economic and Cultural Context

3.1: Introduction

Given the political upheavals and social turmoil of the three hundred years preceding the nineteenth century, it is not surprising that the struggle for freedom of speech, and by extension freedom of the press, followed a similar pattern of turbulence during the nineteenth century itself. As has been explored in the previous chapter, this turbulence was not unconnected to broader contextual factors and historical conditions. It is my intention in this chapter then, to highlight in some depth the conditions that shaped and impacted on the various articulations of free speech and their mediations during the nineteenth century. Such a contextual backdrop of the nineteenth century, one which creates a frame of reference from which a closer philosophical and historical analysis of free speech can be made is methodologically necessary to this thesis. To use an analogy, this chapter is to be the 'primed canvas' on which the detail of the substantive chapters on utilitarianism, liberalism and socialism will be painted. This background picture will consist of broad strokes of context, coloured with some attention to key elements of detail. I argue that to ignore this contextual landscape would be to miss much of what it underpinned - in a historical sense, the philosophical justifications of free speech to be examined within this thesis. Of course the main substantive chapters themselves stand out on their own as individual pieces of academic endeavour. I feel, however, that within the context of this thesis and the methodological framework that I have employed, some consideration of the broader picture is required.

This chapter will be broadly chronological, following on from the previous chapter, which saw the development of notions of freedom of thought, if not freedom of speech, develop into what has been termed a 'struggle'. This struggle during the nineteenth century was fought out within specific boundaries and philosophical parameters, and close attention to these will take place in the following chapters. However, in this chapter I raise the issue of free speech being

more closely connected to broader social political concerns such as education and the extension of the franchise which are tightly bound to ideological assertions in the early part of the nineteenth century, ideological assertions that, I argue, sought to place the middle class in a position of influence, as they attempted to facilitate the conditions which would ensure the unfettered progress of the free market. Firstly, I highlight how the burgeoning social, political and economic context of the early nineteenth century impacted on issues of censorship through governmental statute. I then move on to show how legal constraints were enforced and eventually gradually eroded by a combination of market forces and political expediency. The chapter itself raises a number of issues and claims that will be given greater attention in the substantive chapters, and as such only provide a hint of the full force of the argument which is articulated more completely in Chapters Four, Five and Six.

3.2: Social, Political and Economic Context

Britain at the turn of the nineteenth century was a place of great change and upheaval. At the end of the eighteenth century Britain was seen at home and abroad as a great power. Abroad, that power was established with the defeat of Napoleon at the battle of Waterloo in 1815. At home, the power was evident with new developments and expansion in agriculture and industry. This power was enhanced by the fact that London was seen as the world centre of finance and capital, the motor force of burgeoning capitalist expansion. This period saw Britain's empire become greater and more stable than any other competing country at the beginning of the nineteenth century, and the efforts Britain put in to maintain this state of affairs reveal how important the empire was to successive British governments. The status of Britain as a world power at the beginning of the century acts as a barometer by which we can view the importance of social, economic and political developments taking shape. We will see that such changes acted as a catalyst to the upsurge in radicalism and political activism and revolt which sought some of the most drastic changes in the social and political make up the country had ever seen, some of which would be a success, some of which would fail.

These socio-economic changes that were well underway by the beginning of the nineteenth century impacted significantly on the demographics of Britain. For example, the population grew massively from 12 million at the beginning of the century to 31 million in 1885.¹ This growth in population was reflected in the growth of towns and cities, for example: Liverpool had grown from 82,000 in 1801 to 202,000 in 1831; Leeds from 53,000 to 123,000, with towns like Sheffield and Birmingham doubling in size during the same period.² Such demographic changes also impacted on the nature of the population as a better educated work force was sought after to work in the factories of these growing towns and cities. Thus (and I will explore this further) education of the masses was affected greatly by industrialisation. Similarly to the eighteenth century, at the start of the nineteenth century, the established church with its connection to a rigidly stratified social class system, which also operated as an organ of social control was a major player in the education of the masses. With the onset of industrialisation however, the connection between the established church and education was gradually being eroded. Thus the nineteenth century saw a massive increase in the numbers of people entering education, as educational reform enabled large sections of the populace to gain literary and numeracy skills. This factor should not be ignored, as nineteenth century educational reform should be seen as one of the most crucial and pivotal effects on censorship legislation at that time. As literary rates increased, so too did the need to keep a check on what was being published, as diverse and potentially dangerously corrupting forms of literature were now becoming accessible (though mostly illegal) to a greater number of people of all classes. As I will demonstrate, in conjunction with increased access to education for the population, which was necessary to service burgeoning industrial production, the government was aware that education could also potentially undermine their position. It became increasingly concerned about

¹ D. Beales, *From Castlereagh to Gladstone 1815 - 1885* (London: Nelson, 1969), p. 15.

² L. Woodward, *The Age of Reform, England 1815 -1870* (Oxford: Oxford University Press, 1992), p. 2.

the possibility of agitation and revolt being promulgated by ‘oppositional’ literature. This fear of revolt is affirmed in the proceedings of many cases for criminal libel that were initiated prior to the 1832 Reform Act. Such prosecutions for criminal libel are an important contextual feature of this period, and I will give more detailed attention to these below.

An analysis of the role of education within the context of this study is also important as an analytical device as well as a descriptive one. The role of education was perceived as providing a particular social function dependent upon the analysis used. For example, a *laissez-faire* justification of the role of education, primarily emanating from the economic analysis of the French Physiocrats³ and developed by Adam Smith, performed a specific social function in socialising of the labour force into accepting the view that mankind’s natural condition is to live in a state of inequality. Similarly, a socialist perspective on education, perceives the role of education differently, as it is more closely linked to values of equality and equal distribution of opportunity. Both these analyses, as well as that stemming from utilitarianism, will be examined in greater detail within the substantive chapters, as the role of education and its particular function are important to this analysis of free speech and its theoretical development during the nineteenth century.

Intellectual life also mirrored the changes in Britain’s economic and social sphere. New ideas, which were influenced in part by the revolutions in America (1776) and France (1789) during the previous century, found a new and receptive audience. Radicals and dissenters still fought hard against the old regimes of church and state and the structures of power that they represented. None was more influential than the ideas of Thomas Paine (1736-1809). Paine is an important thinker in terms of nineteenth century struggles for freedom of speech.

³ Quesnay, Mercer de la Rivière, Mirabau and Baudeau. See C. Gide, *A History of Economic Doctrines from the Time of the Physiocrats to the Present Day* (London: Harrap, 1948).

As we shall see, arguments that asserted freedom of speech often went hand in hand with arguments that sought to extend the franchise. Paine was seen as an extremist in Britain and America but a moderate in Paris,⁴ his works resonate through much radical and dissenting literature of the nineteenth century and he was highly influential in the political activity of pamphleteers during the nineteenth century.

Paine was born into a Quaker family in Thetford, Norfolk and his education did not go beyond a few years at grammar school. Even so Paine's contribution to democratic politics is far reaching. At the age of 37 Paine set sail for New England with newly formed ideas on politics. His arrival in America was during a time of great political upheaval with the Colonists at war with their British rulers. It was in the shadow of such turmoil that Paine wrote *Common Sense* (1776) and later after his move to France, the *Rights of Man* (1791-2) 'being one of the most ardent and clear defences of human rights, liberty and equality in any language'.⁵ *The Age of Reason*, in two parts (1794-5), formed the last of Paine's great works.

Paine distrusted the aristocracy arguing that hereditary systems of government 'degenerate into ignorance'; the people at large were best placed to run the affairs of the people through a system of democratic electoral representation. As Jackson notes, Paine saw the justification of government in a Social Contract between the people themselves.⁶ Indeed, 'Paine devoted his life to methods of scattering and subdividing power, to ensuring that it was not monopolised by any single pair of hands or particular "faction".'⁷

⁴ E. Hobsbawm, *The Age of Revolution 1789-1848* (London: Weidenfield & Nicholson, 1997 [1962]), p. 54.

⁵ J. Fruchtman, Jr., *Thomas Paine Apostle of Freedom* (New York: Four Walls Eight Windows, 1994), p. 225.

⁶ J. H. Jackson, 'Tom Paine and the Rights of Man'. In D. Thompson ed., *Political Ideas* (London: Penguin Books, 1990 [1966]), p. 107.

⁷ J. Keane, *Tom Paine A Political Life*. (London: Bloomsbury Publishing, 1996), p. xiv.

The fact therefore must be that the *individuals themselves*, each in his own personal and sovereign right, *entered into a compact with each other* to produce a Government: and this is the only mode in which Governments had a right to arise, and the only principle in which they have a right to exist.⁸

In writing these words, Paine was providing a theoretical account of what had happened in America in 1776 and what was happening in France in 1789. In defending the Revolutions against hereditary interests in favour of notions of natural rights, Paine was providing a politicised formula for democracy that was both influenced by ancient Athens and by the Enlightenment belief in progress in human affairs.

Not only did Paine encapsulate the spirit of democracy in his words, the way he wrote ensured that the common man would be able to understand. *The Age of Reason* as Hobsbawm notes, ‘expressed the radical-democratic aspirations of small artisans and pauperised craftsmen, [and] is as famous for having written the first book to demonstrate in popular language that the Bible is not the word of God.’⁹ It is because of the language of Paine’s works that pamphleteers and agitators took to him and set about reprinting and disseminating his work much to the despair and annoyance of the government. Moreover, the arguments for liberty of the press, particularly in relation to democratic accountability were powerful ammunition for radicals and dissenters during the first forty years of the nineteenth century. Robust and open public debate ‘had confirmed Paine’s view that a “free press” was a basic ingredient of republican liberty.’¹⁰ Returning to the accountability argument set out in Chapter One, the operation of democratic systems is possible only within the confines of a free and open press. Paine’s vision of democracy was one that was both open to all and as such accountable. This view, as we shall see, resonated in utilitarian arguments for freedom of the

⁸ T. Paine, *Rights of Man* (Oxford: Oxford University Press, 1995 [1791]), p. 122.

⁹ Hobsbawm, *The Age of Revolution*, p. 221.

¹⁰ Keane, *Tom Paine*, pp. 463-4.

press as in liberal and socialist arguments also. As we have seen, John Wilkes's trial for publishing Parliamentary proceedings, mentioned in the preceding chapter, has echoes of the accountability argument. Accountability was a necessary component of Paine's view of democracy and this sentiment was carried through by dissenters and radicals into the nineteenth century.

Ideas from radicals like Paine were impacting on institutions and practices, some of which dated back to the Reformation. These systems of governance were now starting to look out of place in this new and fast changing world of the industrial age. Cracks and contradictions were beginning to appear in the machinery and radicals inspired by Paine and other radical thinkers would seek to expose and exploit such fissures and weaknesses. A key example is the movement for political reform.

One of the most prominent historical features of the nineteenth century was the unrest and popular disaffection caused by a system of government which was widely perceived as corrupt, unrepresentative and a restraint on political liberty for the majority of people in Britain. Although at times sporadic and not as vociferous as other struggles in Europe, various movements which sought to redress the balance in political power often (unsurprisingly) found themselves victims of austere legislation, particularly in relation to the production and distribution of printed materials, the focus of which was often perceived by the authorities as at least controversial, and more often than not as seditious. As we have seen with Paine and the accountability argument for freedom of speech, free speech and the fight for a free press can be seen within the broader context of the struggle for political reform. Indeed, as noted, if freedom of speech was not sought after as a right in itself, then it was viewed as a necessary component part of democratic reforms sought by radicals and dissenters. When reform did emerge in the Acts of 1832, 1867 and 1884, the fight for free speech buttressed the various reform movements that gained or won the reform. However, it is not enough for this analysis to place arguments for free speech blandly within the calls for political reform. As I will demonstrate, particular social functions were also served in the movements and arguments that advocated freedom of speech

via freedom of the press. Moreover, different reform movements had different conceptions of reform: utilitarian praxis for example, saw that Parliamentary reform should not be pursued in terms of votes for all, but votes for primarily the emergent middle classes, particularly in the case of James Mill. Thus although having democratic aspirations, I will demonstrate that the functions of social exclusion and even social control were prominent in some arguments for free speech and reform.

In addition to issues relating to education and Parliamentary reform, other emerging questions were gaining the attention of the dissenting press. For example, the condition of the working class was increasingly a cause for concern for working-class movements and liberal reformers alike.¹¹ Poor living and working conditions were exacerbated by the massive expansion in industrialisation, (especially in the industrial towns and cities of the north of England). As Donald Read notes in his study of the early nineteenth-century press in Manchester, Leeds and Sheffield: 'All the leading North of England newspapers of the early nineteenth century [...] had their programmes of solutions for the problems of the new society'.¹² Though the newspapers in Read's study were generally of middle-class opinion, the emerging social issues of the day, particularly with reference to the urban poor, still echoed with some measure of critique, even if they did have a tone of superiority echoed in condescension, as this extract from the *Manchester Times* in 1844 demonstrates:

[...] they are cluttered together with more regard for the saving of ground-rent than for the comfort and health of their inhabitants. In many districts, the crowding of houses into narrow, dark, ill-drained and ill-ventilated alleys and lanes and the cramming of persons into these miserable dwellings is frightful to contemplate.¹³

¹¹ Although as we will see, these concerns were motivated by distinct ideological drivers.

¹² D. Read, *Press and People, 1790-1850* (London: Edward Arnold, 1961), p. 201.

¹³ *Manchester Guardian*, 20th July, 1844, cited Read, *Press and People*, p. 9.

As I will demonstrate in the following chapters, differing philosophical perspectives analysed and articulated the condition of the poor, the role and function of education and the movement for reform very differently, and with differing outcomes. Moreover, these variations in analysis had significant effects on the language in which free speech was to be sought after, as the philosophical justifications for free speech tallied with broader deep seated (though often raw and emerging) ideological formulations and values.

As we have seen in the previous chapter, the agitational pamphlet or dissenting newspaper was not new to those in authority, and the increasing complexity of a burgeoning industrial society coupled with the associated problems and issues brought about by such massive social, economic and cultural upheaval and restructuring, presented the authorities with a wide range of critics and dissenters. Also, with a greater opportunity for the dissemination of critical and dissenting ideas through mass-produced printed material, political struggle would enter a new phase of expression never seen before. As such, some mention of the methods by which the government sought to control such dissent should be made. The arsenal of their campaign to stamp out such dissent was manifested in the law of criminal libel.

3.3: The Law: Criminal Libel

As we have seen in the preceding chapter, during times of extreme crisis of legitimacy there is usually a concomitant upsurge of new legislation to curb dissent which allows for greater numbers of press prosecutions. During the 1770s there were at least seventy prosecutions for public libel. After the terror in France and the anti-Jacobin panic in Britain, there were more prosecutions for libel during 1794 - 1795 than there had been in the previous twenty years.¹⁴ From 1819 to 1821 there were over one hundred and twenty prosecutions on charges of

¹⁴ W. H. Wickwar, *The Struggle for Freedom of the Press 1819 - 1832* (London: George Allen & Unwin, 1928), p. 17.

sedition and blasphemous libel.¹⁵ The machinery necessary to allow such prosecutions needed to be well defined and articulated. The end of the prosecuting system, as Bentham called it, became the focus of the struggle for freedom of the press.¹⁶ Such a system at the beginning of the century was mainly concerned with prosecutions of Criminal Libel. As has been noted more than once previous to this chapter, almost all governments, whatever their make up, have at various times in their rule been vulnerable to threats from insurrection or outright revolution. Most, if not all, governments have sought to impose some form of order on society so as to protect their positions of power. In typically paternalistic vein, those in power at the start of the nineteenth century thought that the so-called order that it sought to impose upon society was just, right and proper. 'Those who ruled Britain at the beginning of the nineteenth century were generally satisfied with the working of the Constitution and the Christianity of the day, and they saw no reason why the whole nation should not be united in the profession of respect for Christianity and in contentment with the aristocratic constitution they had inherited from their fathers.'¹⁷ It is worth noting here, that the term 'libel' was interpreted more widely in the nineteenth century than it is today. In short, the distinction between a criminal libel and a civil libel was that a civil libel was usually brought against someone who had caused a loss of character to an individual or group of individuals. However, even though libels on institutions could only be subject to criminal prosecutions, libels of individuals could be either civil or criminal. If the libel would mean a personal loss of character, then civil proceedings would ensue; if however the libel was 'tending towards' a breach of the peace, a criminal prosecution would follow. Thus though we tend to think of libel nowadays in relation to defamation of character, the much broader concept of libel, as demonstrated, was employed to sanction many different types of radical or dissenting literature.

¹⁵ Wickwar, *The Struggle for Freedom of the Press*, p. 17.

¹⁶ Wickwar, *The Struggle for Freedom of the Press*, p. 18

¹⁷ Wickwar, *The Struggle for Freedom of the Press*, p. 19.

In order to safeguard the peace and maintain the perceived harmony in society, literature that was published and disseminated, that was considered by the establishment to present a threat to the order of society, was deemed a criminal libel. In other words, anything ‘published’ which was considered to have a ‘malicious intention’ of causing a breach of the peace was a misdemeanour in common law and could be prosecuted as a ‘criminal libel’. A closer inspection of the key elements in this brief statement is necessary so as to understand the breadth of such legislation and its implications. Firstly ‘publication’ did not only mean the act of publishing but also the act of circulation, which included selling or retailing or even allowing what was written to be passed on to another person without advertisement. Also, a libel need not be a book or a pamphlet, but could take the form of a picture or a model. Secondly, the notion of ‘malicious intention’ was interpreted as a foreseeable tendency, therefore the possible unforeseen consequences of any publication could make that publication a possible criminal libel, as ‘every person must be deemed to intend the consequences which would naturally follow from his conduct.’ Bizarre as this may seem now, even if the libel was not originally of malicious intent, but had the effect of causing offence, it was seen as a criminal libel and prosecuted accordingly. It was this notion of intent, usually the intent to cause a breach of the peace, that was the essence of a criminal libel. Finally, a criminal libel was seen as a ‘transgression of the standard of public behaviour, and was therefore in some measure a breach of the Kings peace’.¹⁸ The actual phrase ‘breach of the peace’ also carried with it many connotations. For example, any attempt to embroil the monarch in war was unsurprisingly seen as an attempt at breach of the peace. Also, intentionally or not, in some circumstances printed matter may provoke a riot, whether the riot is in support of the literature, or caused by a reaction against the literature, breach of the peace was a possibility and therefore proceedings for a criminal libel prosecution could follow. In essence a criminal libel was anything

¹⁸ Wickwar, *The Struggle for Freedom of the Press*, p. 20.

which is likely to cause a breach of the peace. Such wide parameters of definition were intentionally flexible enough to pertain to many different circumstances. An example of this flexibility can be seen in the fact that every copy of the material that was considered libellous was considered a separate offence and therefore could merit a separate prosecution, the sum total of which could have very grave consequences indeed for any transgressor.

It is clear that criminal libel is the main focus of attention here; however, it is not simply enough to highlight the general meaning of the phrase 'criminal libel'. The actual act of a criminal libel could be broken down into four different types: defamatory, seditious, blasphemous or obscene. As noted, a defamatory libel could be either criminal or civil depending upon the libel's threat to public order, (suffice it to say this work for the most part will not focus on defamatory libels unless they are of a criminal nature). More important to this work however, are the notions of seditious, blasphemous and obscene libel. Seditious libel is possibly the most important variable of criminal libel to this study as it pertains to social and political struggles that are related to the political philosophies under examination. Primarily though, seditious libel meant the open dissatisfaction with the Government of the day, 'every libel against the state and the constitution was an attack on the system from which proceeded such rights as subjects enjoyed.'¹⁹ All literature that brought into question the ruling and governance of the country was deemed a seditious libel and if convicted the perpetrator of the crime was dealt with severely by fines and prison sentences or in extreme cases the death penalty. Essentially the law pertaining to seditious libel covered any publication which sought to:

[...] bring hatred or contempt to the person of his Majesty [...] or the Government and the constitution of the United Kingdom [...] or either houses of Parliament, or to excite his Majesty's subjects to

¹⁹ Wickwar, *The Struggle for Freedom of the Press*, p. 26.

attempt alteration of any matter in Church of State as by law established by any other than lawful means [...].²⁰

The essence then of seditious libel was that the locus of power should be left untouched by harsh words or criticism. The so called 'fear of the mob' was as always paramount in press legislation, as will be highlighted below, when greater attention is given to actual instances of press prosecution.

In close proximity to seditious libel is blasphemous libel, which should be regarded as almost as important as seditious libel, as a large number of the important free speech controversies of the nineteenth century were the result of prosecutions for blasphemous libel, particularly in the latter part of the century. This being the case, some definition of blasphemous libel is necessary. An account of blasphemous libel that was generally adhered to at least at the beginning of the nineteenth century was given by Chief Justice Raymond in 1729, when he states:

Christianity in general is parcel of the Common Law of England, and therefore to be protected by it. Now whatever strikes at the very root of the Civil Government; so that to say an attempt to subvert the established religion is not punishable by those laws upon which it is established is an absurdity.²¹

This dictum was repeated, if not verbatim, then in the same vein during the early years of the nineteenth century. It was also this very dictum that was to be later challenged from many quarters during the rest of the period, as we will see. As it was, during these early years of the nineteenth century, in particular, it was commonly thought by those in power, that the 'established' religion was a useful and powerful mechanism by which the 'lower orders' could be kept in check morally and spiritually. Any threat of a possible overthrow or challenge to

²⁰ 'Public General Statutes and Measures' (60 Geo. 3 & 1 Geo. 4 c. 8) *An Act for the more effectual Prevention and Punishment of Blasphemous and Seditious Libels*. December 30th 1819.

²¹ 'Public General Statutes and Measures' (60 Geo. 3 & 1 Geo. 4 c. 8) p. 26.

established institutions of the state could be stifled by the moral weight that the established church carried.

In order to complete this picture of criminal libel, the notion of obscene libel should be briefly outlined so as to provide a complete account of the boundaries of criminal libel. Literature pertaining to sexual matters was not directly seen as a threat to public peace. However, pornography was perceived by the establishment as primarily contributing to the corruption of the individual character of the lower orders; although this was bad in itself, such a corruption of character could further pose a potential threat to the moral fabric of the country as a whole. Pornography, which sought to influence or induce people into committing ‘unnatural’ practices, was deemed unhealthy for the moral and spiritual culture of the country and as a result legislation was necessary so as to curb the spread of such material and therefore maintain order in society, whether its influence be behind closed doors or not. There were many prosecutions for obscene libel during the nineteenth century as a new high moral climate became all pervasive especially for the so-called ‘lower orders’. The following example is an early example of an indictment for publishing obscene libels and provides an archetypal view of the ‘menace of pornography’, and the perceived gravity of the offence. The indictment is of a bookseller charged with selling indecent books:

That [...], late of [...], etc., bookseller, being a person of a wicked and depraved mind and disposition, and most unlawfully, wickedly, and impiously devising, contriving, and intending to vitiate and corrupt the morals of all the subjects of our said present sovereign lord the king, and to debauch, poison and infect the minds of all the youth of this kingdom, and to bring them into a state of wickedness, lewdness, debauchery, and brutality [...] to the high displeasure of Almighty God, to the scandal and reproach of the Christian religion, in contempt of our said present sovereign lord the king, and his said laws, and to the great offence of all the civil governments [...].²²

²² Chitty’s Criminal Law, 1826. Cited in E. T. Atkinson, *Obscene Literature in Law and Practice* (Lowestoft, Library Press: 1937).

Such vehement condemnation of transgressors of the law of obscene libel was not uncommon, and the passage above demonstrates the point about the perceived threat to the fabric of the nation.

Although I have highlighted separately the differences between the strands of criminal libel, it is safe to say that the distinction between the particular components in terms of their perceived dangers vary only slightly. The blending of political, religious and sexual deviance into one was warranted, as the perceived threat to social stability stemmed from literature that questioned the social and moral norms and values that buttressed the controlling institutions of the day.

Although the instruments of Government and Church were all powerful in generating moral hegemony, Roberts²³ notes that English law at this time was extremely sensitive to community values and moods. The result of this was the lack of continuity in the courts as to what was and was not perceived as criminal libel. For the most part juries were guided by judges and lawyers, who in turn were guided by legal precedent. It is argued that the thrust of legislation was to 'protect' the 'unwashed masses' from themselves. However, as the nineteenth century progressed, 'the lower orders themselves are judged to be less alienated, and therefore more capable of defending themselves against moral subversion.'²⁴ However, as will become clear below, the so-called 'lower orders' were only 'allowed' limited powers of expression as an increasingly paternalistic middle class ensured that limited gains for the working classes were offset by massive gains for the middle classes. Unsurprisingly, prosecutions for libel were at their highest at times when the propertied classes feared the spread of political dissatisfaction amongst the un-propertied lower orders, lower orders that were

²³ In 'Blasphemy, Obscenity and the Courts: Contours of Tolerance in Nineteenth Century England'. P. Hyland, & N. Sammels, *Writing and Censorship in Britain* (London: Routledge, 1992).

²⁴ Roberts, 'Contours of Tolerance in Nineteenth Century England', p. 146.

encouraged to vent their dissatisfaction by radicals and dissenters of the day. As we will see below, the measures of criminal libel were enacted many times, with varying degrees of success. This said, it is important to consider the legal and procedural constraints that the government had in its armoury at this time, and the lengths it went to, to ensure that its edicts were adhered to. Legal constraints however, did not solely emanate as a *reaction* against dissent, but as we have seen in the previous chapter, were part of broad historical processes. For the purposes of this chapter it is now necessary for me to highlight and explore this reaction against dissent by examining the ‘mind set’ that characterised those that generated and implemented the censorship laws that proved such an obstacle to dissenters and agitators.

3.4: Age of Anxiety

My task now within this contextual survey is to provide an analysis of the ‘state of mind’ of the establishment and its supporters, that ensured the battles for free speech would be hard fought. Clearly the wave of momentum and resistance that emerged during the nineteenth century did not emanate from actions or processes that had no historical or philosophical context. The intellectual climate in Britain was, at times, one of cautious optimism about science and progress. However, this optimism which had its roots in the Enlightenment, was also met in equal measure with great anxiety, especially from the elite and the guardians of the state. ‘Expanding business, scientific development, the growth of democracy, and the decline of Christianity were sources of distress as well as of satisfaction.’²⁵ This is not an unreasonable assertion given that the institutions and power structures that had existed for so long were now being challenged with vigour by new ideas and activity. Such anxiety would provide much of the motor force behind the resistance to a free press from within the machinery of the state.

²⁵ W. E. Houghton, *The Victorian Frame of Mind, 1830-1870* (New Haven: Yale University Press, 1957), p. 54.

One manifestation of such anxiety is seen in press prosecutions for libel concerning the Napoleonic wars from 1800-1815, (and later European Revolutions) and as an example of this trend, it is to this that I will first turn. As noted, anxiety was a strong emotion amongst nineteenth century elites and much of the focus of their anxiety lay in the movement for Parliamentary reform. Democracy was viewed with great fear as the perceived dangerous ideas of the French Revolution increased in popularity. Given the political culture of the time - the continuing war with France and the ensuing paranoia that haunts all governments in times of conflict, coupled with the population's disillusionment with the political system, it was no surprise that most of the prosecutions for criminal libel at the beginning of the nineteenth century were centred around two key issues: the first concerned the war with France; the second, and one which has been mentioned before (as it will again) was political reform. For example, (and as we will see) literature such as Cobbett's *Political Register*, Wooler's *Black Dwarf* as well as Hone's cutting satires and John Cartwright's polemics provided the prosecuting authorities with no shortage of activity.

The war with France provided radicals and dissenters with many opportunities to launch attacks on government legislation and policy. This in turn provided the authorities with ample reasons for suppressing such attacks as it sought to protect its position of authority from dissent. The French Revolution and subsequent ideological and material developments impacted greatly on the political consciousness of early nineteenth century Britain. This impact should not be underestimated. Moreover, the revolutionary fervour in Britain generated by the Jacobin uprising soon waned after the 'degeneration' of the revolution by Napoleon. However, this did not stop anti-war propaganda from being published in Britain, nor did it stop the spirit of the revolution from causing concern among those in power. Their fears were not without foundation. Examples of elite anxiety were expressed by prosecutions of pro-revolutionary literature; literature

that supported French resistance or echoed Jacobin sentiment was prosecuted. For example, Jonathan Panther was fined £100 and imprisoned for three months for publishing so called pro-French anti-war 'propaganda' in 1804,²⁶ while in 1805 Thomas Rickman was convicted for publishing Thomas Paine's *To The people of England* which called for people to welcome French invasion.²⁷ Thomas Spence also courted prosecution from the authorities over his forthright political beliefs, advocating the abolition of private land and the creation of an egalitarian society.²⁸ Indeed the views of Spence proved highly influential during the early years of the nineteenth century, with the setting up of his 'Spensonian Society' which initially mainly comprised survivors of the Jacobin revolutionary movement, which had been 'smashed' by the Napoleonic repression of 1798-1803. As McCalman²⁹ highlights, the setting up of the 'Spensonian Society' and later (following Spence's death) the 'Society of Spencean Philanthropists', mark the beginnings of a cohesive political force, a force that had echoes of the revolutionary spirit of 1798. Such a force is a good example of the burgeoning culture of dissent in the early part of the nineteenth century in Britain.

Even though pro-French and Jacobin literature was fiercely prosecuted, not all literature at this time that was subject to censorship endorsed the sentiments of the French Revolution. Critics of the government's handling of the war, in terms of perceived tactical blunders, were as prone to prosecution as those who fought against the war. Clearly Establishment sensitivity to criticism was acute. For example, *The Morning Post* was prosecuted in 1807 for criticising the Whig government's bad management of the war with France. In another instance, the British Commander in Chief, the Duke of York, also came in for a fair share of

²⁶ Thomas, *A Long Time Burning*, p. 143.

²⁷ Thomas, *A Long Time Burning*, p. 143.

²⁸ During the years 1792 and 1795 he had been indicted and sent to prison three times for such political libels.

²⁹ I. McCalman, *Radical Underworld, Prophets, Revolutionaries, and Pornographers in London, 1795-1840* (Oxford: Clarendon Press, 1993).

criticism on the way he was managing the conflict, and over his 'personal characteristics'. We see this in the subsequent prosecution of J. H. Hart and H. White, who were charged with a libel writ for 'questioning the Duke's competence' and denouncing him as 'a spendthrift, licentious debauchee, and double adulterer'. Indeed, the Duke's reputation was further damaged when the Attorney General subsequently dropped the case against Hart and White.³⁰

A more famous (or infamous) set of prosecutions between 1808 and 1810 implicating the Duke of York involved a Major Denis Hogan who was an ambitious army officer. Hogan was to put his case for promotion unsuccessfully to the Commander in Chief, the Duke of York. However, in the process of his application, it was anonymously suggested that Hogan pay a sum of £600 and his promotion would be granted. Outraged by this bribery, Hogan prepared for publication a pamphlet detailing the corruption of the highest level within the military. The pamphlet was duly advertised in the press. However, when he returned home one night, Hogan found an envelope containing £500 and a letter saying that if he remained silent he 'would earn the gratitude of the royal family'. Angry at this, he returned the money and made the whole story public in a piece entitled 'Hogan's Appeal', which was printed in John and Leigh Hunt's radical *Examiner*. The result was a prosecution for libel, which was eventually dropped when an ex-mistress of the Duke of York confessed to extorting money from gullible army officers who sought promotion. The Duke of York resigned as commander in Chief, only to be reinstated in 1811.³¹

The ferocity of press prosecutions relating to even the most trivial matters, when coupled with echoes of dissent, exemplifies the anxiety of the state in relation to the spread of 'dangerous ideas'. Other scandals involving the military during this period which involved press prosecutions even concerned the issue of military

³⁰ Thomas, *A Long Time Burning*, p. 145.

³¹ Thomas, *A Long Time Burning*, pp. 145-146.

flogging. For example in 1810, William Cobbett in his *Weekly Political Register* criticised the practice of flogging and was sentenced to two years imprisonment for sedition. Another episode which was centred on the practice of military flogging concerned an article by John Scott. His article entitled 'One Thousand Lashes' which was published in John Drakard's *Stamford News* and later in the Hunts' *Examiner* criticised the practice. Fortunately and much to the Attorney General's displeasure the prosecution for seditious libel against the Hunts was dropped by the jury on a 'technicality'. John Drakard was not so lucky, a court in Lincoln found him guilty of seditious libel and he was imprisoned for eighteen months.³²

There can be little doubt that the war with France had a lasting intellectual impact among the British people, both in terms of buttressing the resolve of those in power by fear and anxiety of revolt and revolution, and conversely, sparking the imagination of many a romantic reformer. From the government's perspective, anything that was associated with the revolution was deemed hostile to the 'British Constitution'; as not only had Britain won the war of ideas against France and its revolutionary legacy, it would also win the moral war. '[O]nly moral standards, supported by "vital religion", were guarantees of social order, national greatness, and individual salvation. They were held to be the foundation of both morale and of victory.'³³ Even though the government's resolve was initially boosted by the victory over the old enemy, it did not take long for a spirit of change to evolve in certain sections of the masses, in the light of the continuing misery and deprivation of the majority of the British people. This did not go unnoticed by the ruling elite. Indeed the established order could not hide from the fact that calls for a free press and other associated freedoms were resonating across Europe amongst liberals and working-class radicals alike. As we will see, struggles such as those against the anti-free-trade Corn Laws which were first

³² Thomas, *A Long Time Burning*, p. 146

³³ A. Briggs, *Age of Improvement* (London: Longman Group Ltd. 1959), p. 172.

introduced in 1804, or the working-class Chartist movement, which was formed in 1838 after the dissatisfaction with the 1832 Reform Act, would also resound in the minds of the ruling elite. Moreover, if free speech via freedom of the press was not implicit in their demands, it was instrumental to their cause.

Interestingly, this theme was not confined to Britain, as across Europe similar struggles were taking place. The impact on governments, as Goldstein notes, would be difficult to ignore as ‘demands for press freedom were one of the major rallying cries [...] throughout the nineteenth century, and played a major role in revolutionary upheavals in 1830 in France, Belgium and Germany.’³⁴ As is intimated here, the struggle for freedom of speech often went hand in hand with other struggles, either implicitly, or instrumentally.

In addition to the anxiety caused by the threat of revolution, which had not dissipated even after the Reform Act of 1832, was the threat to established religion. This perceived threat should not be understated, as the power of the church within Britain at this time, with its links to the state, was strong. Often moral authority was espoused with overt reference to God and this was attacked throughout the nineteenth century by rationalist and secularists alike. ‘It was then assumed in spite of rationalist denials, that any collapse of faith would destroy the sanctions of morality; morality gone, society would disintegrate.’³⁵ Threats to established religion would mean that the old authorities had to repress not only agitational literature that pertained to social and political issues, but also those that generated critiques of the moral code. Such attacks on the moral code would mean that the ‘lower orders’ would be morally lost, and even more prone to revolution.³⁶ Houghton explains why the working class was more inclined to reject established religion and enable atheism to become increasingly acceptable.

³⁴ R. J. Goldstein, *Political Censorship of the Arts and the Press in Nineteenth Century Europe* (London: Macmillan, 1989), p. 33.

³⁵ Houghton, *The Victorian Frame of Mind*, p. 58.

³⁶ See Houghton, *The Victorian Frame of Mind*, p. 59.

Firstly, he notes that this was rooted in the sceptical nature of radical thought, explicit in the work of Paine and the early 'freethinkers'. Secondly, the neglect of the new industrial towns and their associated problems by the Church of England (only partly offset by the Methodist movement) was not unnoticed; thirdly, the general adherence by the Clergy to Tory and aristocratic principles, which of course was largely perceived as responsible for the plight of the poor; and fourthly, the suffering and deprivation which seemed at odds with the existence of a just and merciful God.³⁷ Adding to this anxiety was spiritual trauma that had its roots in Puritanism, that engendered a spirit of distress and self denial, and found itself at odds with a fast changing world. The idea of altruism, a sentiment closely linked to the paternalistic ethos and the puritan ethic of the nineteenth century elite, was a prominent component of the moral high ground, particularly in Victorian Britain. As Collini notes, 'as one reads beyond the few canonical works of political thought from the period, one becomes increasingly aware, not just of the distinctive tone and idiom of the Victorian's sense of moral seriousness, but, less obviously, a recurring pattern of assumptions about the relations between selfishness, altruism, and human motive.'³⁸ Or as Chesney posits, 'morality, an explicit sense of moral purpose, is not simply estimable: it (had) become in the broadest cultural sense fashionable, and prudent men with their way to make, trim their sails accordingly.'³⁹

It is correct to assert that the anxiety being felt by the establishment and its supporters was not unfounded, the biggest assault against the system of government that had lasted nearly four hundred years was being propagated by a new powerful middle class. Middle-class radicalism, propelled by *laissez-faire* economic doctrines eventually became incompatible with the political structures, as how could economic freedom exist without political freedom, and political

³⁷ Houghton, *The Victorian Frame of Mind*, pp. 59-60.

³⁸ S. Collini, *Public Moralists: Political Thought and Intellectual Life in Britain 1850-1930* (Oxford: Clarendon Press, 1991), p. 62.

³⁹ K. Chesney, *The Victorian Underworld* (London: Penguin, 1970), p. 6.

freedom for the middle class was political enfranchisement. Although part of the contextual picture has been sketched thus far in this chapter, it is necessary for me to provide a little more detail with regard to the battle for a free press which emerged during this time of great flux and upheaval.

3.5: Free Speech as Political Expediency?

Symptomatic of the weakening grip on its position, state prosecutions for criminal libel were becoming increasingly less successful towards the end of the 1820s and the beginnings of the 1830s. The failure of the Duke of Wellington to prosecute successfully the *Morning Journal* in 1829 for libel after the paper's assault against him, followed in 1831 by Cobbett's libel acquittal,⁴⁰ seemed to sound the death knell of post publication press prosecutions and sound alarm bells in the House of Commons and the Lords. Eventually, cries for reform that had so long fallen on deaf ears were heard and could no longer be ignored, and in 1832 the First Reform Act ensured that the franchise was widened, if only in a limited sense. However, the aristocracy and landed interests remained politically dominant. Moreover, it was middle-class interests that had won the day as working-class enfranchisement dwindled. In 1832 'the vote was extended to more of the middle-class, with many of the working-class losing their votes. It was still only one in seven adult males who could vote.'⁴¹ However limited though the extension of the franchise was, it did seem to dampen down disquiet, especially amongst the middle classes, in that the extension of the franchise and the redistribution of seats in the House of Commons meant that the impetus for prosecutions against the press waned as the amount of dissent decreased. This point provides a good example of the motivation behind middle-class radicalism as their calls for increased political representation wavered as their political power increased. It would eventually become no longer expedient to advocate

⁴⁰ See Chapter Six.

⁴¹ Pearson & Williams, *Political Thought and Public Policy*, p. 29

total freedom of the press, as this would only encourage the lower orders to challenge a system that the middle class was increasingly beginning to feel more at ease with. According to Erskine May, along with the franchise 'the freedom of the press had been assured, and the journalists had won the 'utmost latitude of criticism and invective' in their treatment of public figures and political affairs.'⁴²

Although Erskine May's exaltations were for the most part well founded, they may have been a little premature, as other obstacles remained in place, thus obstructing a totally free press. One such obstacle was the stamp duty, which was put into place as early as 1712. This stamp duty 'was intended to discourage political opposition by imposing a stamp duty of a penny a sheet on newspapers and two shillings a sheet on one copy of each edition of a pamphlet which was more than half a sheet'.⁴³ The notion of a tax on publication was unsurprisingly seen by some of the established press and smaller scale publications as an injustice and a continuation of post publication restrictions on the circulation of printed materials. Moreover, it placed restrictions on the *laissez-faire* ethos of the day. However, as Curran⁴⁴ points out, from the government's viewpoint, the tax was perceived as useful in that it served a number of ends. Firstly, a tax on the press would ensure that readership would be restricted to the middle classes; also, the system of tax would ensure that the ownership of newspapers would be largely restricted to the propertied classes. Furthermore, the Chancellor saw it as a great source of revenue, and it would take vast amounts of pressure and persuasion to make him repeal the tax.

The stamp tax on the press was an issue that caused much unrest even before the breakdown of the post publication press prosecution system and the extension of

⁴² Sir Thomas Erskine May, *The Constitutional History of England Since the Accession of George the Third*, (1861), Cited in A. Jones, *Powers of the Press* (Aldershot: Ashgate Publishing, Scholar Press, 1996), p.13.

⁴³ Thomas, *Long Time Burning*, p. 37.

⁴⁴ J. Curran & J. Seaton, *Power Without Responsibility, The Press and Broadcasting in Britain* (London: Routledge, 1999).

the franchise. It was assaulted by opposers of the tax from many quarters. One key argument against the tax, that emerged and continued with greater force after the Reform Act of 1832, was that it was perceived as a threat to greater understanding and knowledge; indeed it was often termed a 'tax on knowledge'. In a speech to the House in 1831, Joseph Hume argued that the petition that he was presenting was 'against all laws which prevented the circulation of truth, and laid imposts on knowledge'.⁴⁵ He continued arguing that 'a tax on knowledge or the spread of information, was injurious to both individuals and to the community at large'. He knew of 'no legitimate way of opposing opinions but by arguments; and that opinion that could not be met by argument must be a sound and just one.'⁴⁶ Such a focus on the post publication tax was taken up keenly by Bentham's followers such as John Arthur Roebuck, Henry S. Chapman and Francis Place, the details of which will be examined in greater depth in the following chapter.

It could be argued at this stage, however, that a slight change of emphasis is emerging as to the motivations and justification of agitators who sought the complete removal of press restrictions. Instead of a free press to aid and buttress democracy, the free press, echoing Richard Carlile's sentiments, is being perceived as an end in itself, as a key that will open the door of knowledge. I think that it would be naïve to assert that free speech via freedom of the press was sought after as an end in itself, as an eternal right above others as Cartwright proclaimed. Rather it should be seen in the context of struggles for political and economic freedom and an arm of social control. Again, I will devote greater attention to the particular motivating factors of those that sought a free press below.

⁴⁵ Hume, Cited *Hansard*, Vol. 6 (1831), p. 9.

⁴⁶ Hume, Cited *Hansard*, Vol. 6 (1831), p.11.

Jones⁴⁷ points also to a number of arguments that were generated against the so called 'tax on knowledge' after the 1832 Reform Act. He notes that much of the emancipatory wave that followed the 1832 Reform Act continued naturally from earlier agitation, and developed into arguments against the stamp tax. Surely Parliamentary reform would be flawed and incomplete were the press not part of the formative democratic transformation of society? 'The freedom of the press was thus regarded not only as the essential safeguard of all constitutional freedoms, but also of the equitable distribution of power at the level of the estate, the parish and the home.'⁴⁸ 'Why exchange an oligarchy of boroughs with an oligarchy of journals?' Again, freedom of the press was closely associated with political emancipation, and the contradictions of press restrictions in the form of duties with the free market were highlighted with vigour.

In 1836, with the passing of the Acts 6 & 7, William IV reduced the four pence tax to one pence. This seemed to appease many agitators, who then eventually went on to concentrate their energies on the Chartist movement or the Anti Corn Law movement. However, the end of the post-publication taxation system also impacted on the ability of the working-class press to reach their intended readership, as increasing compliance with the law, due to a reduction in the tax and harsh new coercive powers to deal with the illegal press, meant that the radical papers would now have to raise their prices, thus making them out of reach for a great number of their working-class readership. This of course also meant that by 1837, the clandestine radical press had disappeared.⁴⁹

In 1848 a group of working-class and middle-class repealers which included Collet, Hetherington, Holyoake and Watson formed 'The Association for the Repeal of Taxes on Knowledge' as they were still unhappy with the one pence

⁴⁷ Jones, *Powers of the Press*, pp. 19-23.

⁴⁸ Jones, *Powers of the Press*, p. 20.

⁴⁹ Curran, *Power Without Responsibility*, pp. 12-13.

duty.⁵⁰ This group, following earlier years' examples, challenged the authorities to a courtroom battle over the so-called tax on knowledge when they produced in 1853 the *Potteries Free Press*, an unstamped penny weekly. When prosecutions from the stamp office followed, petitions were organised and enough support was generated to draw up a bill which sought to abolish the remaining duty. In 1855 this bill was presented to Parliament which sought to abolish the remaining duty on newspapers. Eventually, after much debate, Lord Palmerston declared that he had confidence in the people not to allow a degradation in the press and that the so called evils which were anticipated would not emerge. At last and after much argument, the free market was seen to be by far the most powerful force in the area of the press as it allowed for the best to succeed and the worst to fail. The stamp tax was repealed in 1855.⁵¹ Eric Glasgow commenting on the growth of publishing in Victorian England also comments on the growing power of the market and its impact on the commercial publishing industry when he notes that publishing 'became a distinctive feature of the "free market" economy and the triumphant capitalism which had followed the development in England of the Industrial Revolution.'⁵²

After the repeal of the last stamp tax, it was generally safe to assume that the liberty of the press was eventually won in legal terms at least. However, there was yet another obstacle which stood in the way of a truly free press. That obstacle was another tax: the duty on paper. In his address to the Commons in 1858, T. Milner Gibson, the president of the 'Newspaper and Periodical Press Association for Obtaining the Repeal of the Paper Duty',⁵³ argued that the tax on paper should not only be removed as it was a tax on knowledge, but that a duty on paper was conflicting with the interests of the marketplace. He also notes that '[t]he paper

⁵⁰ See Chapter Five.

⁵¹ See Jones, *Powers of the Press*, (1996), pp. 21-24.

⁵² E. Glasgow, 'Publishers in Victorian England', *Library Review*, Vol. 47, No. 8, 1998 pp. 395-400, p. 395.

⁵³ He was also a key member of 'The Association for the Repeal of the Taxes on Knowledge'.

duty was a most pernicious tax in every point of view in which it could be considered.’⁵⁴ He continues:

The immediate object of proposing this Motion was to show the House the great inconsistency they were guilty of in asking Parliament continually to increase the votes for education, while they maintained a tax which [...] stood in the way more than anything that could be conceived of the diffusion of knowledge among the great masses of the people.⁵⁵

The notion that an outside body should interfere with the ‘natural’ processes of the market was held up as being socially irresponsible as the health and prosperity of society would suffer. The forces of capitalism, the motor of social progress, should not be interfered with if the health of the country was to remain good. Also the duty on paper, as argued by Milner Gibson, was a direct contribution to the amount of poverty, as it had a detrimental affect on the labour investment potential of the newspaper press industry. Milner Gibson’s campaign was subsequently given widespread support, support which unsurprisingly crossed class boundaries. As the tide of support became evident across the country it was no surprise when in his Budget of 1861, Gladstone finally repealed the stamp duty on paper. Finally, after nearly four hundred years of struggle the war against formal censorship of the press was won. Thomas⁵⁶ argues that for the most part, the struggle for a truly free press was indeed won.

3.6: Conclusion

The concluding remarks of this chapter serve to reassert the importance of a contextual insight in a study such as this. This chapter and the preceding one, act in a dynamic way, to provide the propulsion through which the substantive

⁵⁴ T. Milner Gibson, *Hansard* Vol. 151 (1858), p. 100

⁵⁵ T. Milner Gibson, *Hansard* Vol. 151 (1858), p. 101.

⁵⁶ Thomas, *A Long Time Burning*, p. 214.

sections are to be analysed and explained. Thus I conclude this section by rehearsing some arguments that resonate throughout this thesis.

It is possible to trace the battle against press censorship across many lines of engagement. However, I contend that the final battle against press control was won on generally economic and political grounds. The force of capital won over old power regimes and its accompanying restrictions on emerging notions of freedom. Moreover, the middle-class fight for freedom of the press was fought also in terms of winning the means to attaining and then maintaining its power base over the so called lower orders. It could be argued that massive social movements alone and the threat of revolution were solely responsible for the gradual shift in the progress towards a free press, but this would negate the force of historical processes that were to culminate in the industrial revolution and its associated impact on structures of power and power relations. Moreover, I assert that the main influence in the movement of the free press was that of the development of the free market and the massive tide of social change that went with it.

As we have seen in the previous chapter, there was impetus for censorship over the four hundred years since the birth of commercial printing, and arguably the unifying theme amongst all of them was the need to maintain the status quo. Whether the fight was within national boundaries or outside them, authorities saw it (not unsurprisingly) as crucial that any threat to their power base be halted. One sure way of stopping this threat (if only temporarily) was via suppression of the written word and more importantly halting the spread of the ideas that these words conveyed. Of course the motion of history brings with it many different circumstances and, as circumstances change, so too do the lines of engagement. But as we have seen, the onset of industrialisation was obviously by far the biggest threat to the old power structures which had their birth in feudal times and were gradually to be broken down by the march of progress. The force of the free market in capital and ideas ensured that eventually press legislation had to be curbed and ultimately halted as contradictions were highlighted; control of the press by the machinery of the state was seen as a contradiction within the

emerging capitalist system itself, and was inconsistent with the very foundations of *laissez-faire* philosophy. In doing so the radical working-class press, which asserted itself against middle-class interests were eventually defeated. They were defeated in part by the power of capital and the weight of four hundred years of struggle. In making this point, it is worth quoting Curran as he notes:

The decline of the radical press in the second half of the nineteenth century must be situated in its wider social context: the defeat of the militant working-class movement; the lack of developed consciousness that rendered the working-class vulnerable to ideological incorporation; and the development or extension of a number of agencies of social control mediating consensual values which became, to a lesser or greater extent, internalised by the majority of the population; A crucial factor, however in the eclipse of radical journalism was the industrialisation of the press.⁵⁷

However, it is important to note that ideas *did* play their part, as well as the context in which these ideas prospered, and it has been the function of this chapter and the preceding one, to provide the context in which such ideas developed and flourished and thus prepare the way for the main substantive part of the thesis.

I have thus far set out to outline the context of the struggle for free speech, to provide an overview and to plot the significant events and periods in the development of the free press that fall outside the main foci of analysis in this thesis. My main task, however, is to explore the philosophical arguments for freedom of speech and their impact on the movement towards a free press, and the actual processes which sought to bring it about during the nineteenth century. I aim to concentrate on the interaction between these philosophical ideas and their application during one of the most turbulent periods of social change; ideas that may or may not (as we will see) have helped pave the way for such processes to

⁵⁷ J. Curran, 'The Press as an Agency of Social Control: An Historical Perspective'. In Boyce, G., Curran, J. and Wingate, P., eds. *Newspaper History: From the Seventeenth Century to the Present Day* (California: Sage Publications, Inc., 1983), p. 67.

take place. Indeed in uncovering the processes and philosophical turns that provided much of the intellectual ammunition that lay behind many of the events depicted above, it may emerge that the cries of victory from those who sought to ensure a free press were somewhat premature; as the battle against censorship continues into the twentieth century. Indeed, Sue Curry-Jansen argues that Enlightenment claims that it laid censorship to rest are false, and that state and church censorship have been replaced by market censorship, or what she terms constitutive censorship. This constitutive censorship maintains the power relations that censorship prior to the so called victory of free speech sought in earnest. It is worth quoting her at length and bearing her comments in mind as we now turn to the philosophical justifications of free speech and their application during the nineteenth century:

The term constitutive censorship is used to call attention to a form of censorship which Liberal political theory ignores or denies. Contra Liberalism, I maintain that in all societies the powerful invoke censorship to create, secure, and maintain their control over the power to name. This constitutive censorship is a feature of all enduring human communities—even those communities which offer legislative guarantees of press freedom.⁵⁸

⁵⁸ S. Curry-Jansen, *Censorship: the Knot that Binds Power Knowledge* (New York: Oxford University Press, 1991), pp. 7-8.

Summary

Chapter Three provides a contextual insight into the conditions that shaped and impacted on the various articulations of freedom of speech during the nineteenth century. Again, methodological considerations are paramount as the functions of this chapter are to generate an understanding of factors that shaped and impacted on the philosophical arguments for freedom of speech and their praxis. The chapter highlights the emerging themes such as the franchise and the expansion of education that arguments for freedom of speech were starting to be associated with and which started to be challenged by formal legal restraints which are also revealed in some detail. In highlighting the social and economic development of Britain, the chapter suggests that as middle-class ideas entered the ascendancy, formal constraints to freedom of speech waned. As such, the middle class, initially via paternalistic discourses and power politics, framed the parameters in which working-class arguments could be expressed. Thus the notion of formal censorship, though challenged and eventually 'killed off' by successive attacks from the middle class, was replaced by a restrictive market orientated form of control, which Curry-Jansen highlights as constitutive censorship.

CHAPTER FOUR

Utilitarianism: A Paternalists Charter?

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Utilitarianism: A Paternalists Charter?

- 1: Introduction
 - 2: Jeremy Bentham and the Principle of Utility
 - 3: Bentham and Free Speech
 - 4: Utilitarianism's Mentor: James Mill and Freedom of the Press
 - 5: Utilitarianism in Praxis: The Arguments for a Free Press
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 - i, Political Economy*
 - ii, Rationalism as a Political Force*
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 - 8: Conclusion
- Summary

CHAPTER FOUR

Utilitarianism: A Paternalists Charter?

The first question for philosophy is not do you agree with utilitarianism's answer? But do you really accept utilitarianism's way of asking the question?¹

There is scarcely a writer on moral and political theory who is free from every taint of utilitarianism.²

The Newspaper should be the book of the poor man. Untaxed, it is one of the prime necessities of his life; taxed, it is converted at once into a luxury for the rich.³

4.1: Introduction

The purpose of this chapter is to examine the utilitarian philosophy and praxis of freedom of speech, which is exemplified in utilitarian demands for a free and unstamped press. I will begin by highlighting the main elements of utilitarian theory which provided the philosophical force in the fight against government restrictions on the newspaper trade and press freedom during the early part of the nineteenth century. I will then go on to examine in detail examples of the main arguments that were used by utilitarians to bring an end to the so called 'taxes on knowledge', in 'radical' newspapers, journals and pamphlets. From this I argue that the praxis of utilitarianism, particularly with regard to arguments for freedom of the press has less of a democratic flavour than that found Bentham's original political philosophy. Moreover, I argue that the praxis of utilitarianism was inherently socially divisive and sought to place an affluent middle-classes in a position of power over, not only the political machinery of the country, but also the so-called 'lower orders'. Indeed I argue that the praxis of utilitarian

¹ Williams in B. Williams, & J. C. C. Smart, *Utilitarianism for and Against* (London: Cambridge University Press, 1973) p. 78.

² J. Plamenatz, *The English Utilitarians* (Oxford: Basil Blackwell, 1966) p. 1.

³ H. S. Chapman, 'Mr Spring Rice and the Tax on Knowledge with a Postscript on the French King and the Press' in J.A. Roebuck ed. *Pamphlets for the People* (London, 1835) p. 10.

justifications of freedom of the press are an expression of middle-class interests which are keenly linked to the political economy of *laissez-faire*. In order to be sure that the aims of the Philosophic Radicals were met, an assertion of a level of social control over the working classes was necessary. I demonstrate such assertions within utilitarian praxis particularly in relation to arguments for freedom of the press, citing the assertion of political economy, an overarching adherence to rationalism and the force of the press as moral censor as key elements of utilitarian praxis.

Much of the material for this chapter stems from an examination of the particular arguments used in such publications as the *Examiner*, *The Westminster Review*, and, in particular, a series of pamphlets published by John A. Roebuck MP, collectively known as ‘Pamphlets for the People’, where radical and utilitarian arguments for a free press are powerful and resonant.

Before any analysis of the particular is to be made, however, some understanding of the general should be noted. It is therefore my intention to commence my examination of utilitarian theory and free speech by providing an overview of the elements of utilitarian philosophy which are fundamental to any understanding of the struggle for a free press. This examination will begin with an overview of Jeremy Bentham and his Principle of Utility.

4.2: Jeremy Bentham and the Principle of Utility

Often considered a nineteenth-century thinker, Jeremy Bentham (1748-1832) was a child of the eighteenth-century Enlightenment and his philosophy displays this emphatically in its emphasis on rationalism as the master over natural instinct, as will become clear below. However, in order to make sense of Bentham’s wider contribution to free speech theory and practice, it is necessary to analyse and

evaluate the foundations of Bentham's political philosophy and its methodological structure.

The main (but by no means only) focus of Bentham's life was political and legal reform.⁴ In short, Bentham was concerned with the organisation and structure of social institutions in the context of formulating a critique of existing (and as he saw it) inadequate law; and, to develop the blueprint for a state and its institutions, which would operate upon a purely rational basis.

As far as Bentham was concerned, and true to his Enlightenment credentials, any understanding of legal and political systems could only emerge through a total rejection of metaphysics and an unrepentant embrace of positivism with its strong emphasis on a systematic and scientific analysis of society. A thoroughly logical analysis of social structures and practices, coupled with a rationally based scrutiny of legal and constitutional codes, was fundamental to the development and application of Bentham's political philosophy. It is important to note however, that this analysis was not to exist in some 'philosophical ether', but provide the grounds for practical application; as Sir Leslie Stephen argued in the introduction of his three volume study of utilitarianism:⁵ 'utilitarian doctrines were worked out with a constant reference to practical applications'.⁶ Thus the advocate of utilitarianism was also the practitioner of his beliefs to the best of his ability; and in this respect, Bentham was no different.

It is clear that even early on his career this embrace of logic, coupled with the influence of writers such as Hobbes, Locke, Hume, Montesquieu and Beccaria, that Bentham was soon to formulate possibly his most famous contribution to political philosophy, notably the 'principle of utility' or the 'greatest happiness

⁴ For a contemporary review of the arguments between Jeremy Bentham and Brougham on political reform, see *Westminster Review*, Vol., XI, 1829, p. 447.

⁵ L. Stephen, *The English Utilitarians* (New York: Augusts M. Kelly, 1968 [1900]).

⁶ Stephen, *The English Utilitarians*, p. 1.

principle'. Bentham hoped that the formulation and application of this principle would make him 'the Newton of the Moral world',⁷ and 'provide a philosophy for radical reformers.'⁸

For Bentham, there was only one criterion for evaluating or even analysing legal and constitutional systems: that being the maximisation of happiness of the greatest number under that law. Heavily influenced by Thomas Hobbes's understanding of natural law and the foundations of its rational ordering, Bentham formulated a rational system that would seek to provide the moral and legislative backbone for legitimate legal and governmental systems. Simply put, for Bentham it is only natural for humans to seek that which will provide pleasure and avoid that which will induce pain. From this starting point, it is possible to view actions as either good in that they promote pleasure or happiness; or bad in that they bring about pain or unhappiness. For Bentham, all human actions are those which seek to promote pleasure and avoid pain. Bentham makes this point emphatically when he argues:

Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. [...] They govern us all in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it.⁹

This assertion then is *the* primary statement Bentham makes in his seminal work, *An Introduction to the Principles of Morals and Legislation* published in 1789. In this text Bentham briefly sets out the premise of the utility principle and then in greater detail how it should be applied to society in general and law in particular. The thrust of the work is in setting out what sort of actions should be prohibited,

⁷ Stephen, *The English Utilitarians*, p. 179.

⁸ Stephen, *The English Utilitarians*, p. 214.

⁹ J. Bentham, *An Introduction to the Principles of Morals and Legislation* (London: Methuen, 1970 [1789]), p. 11.

and what actions should take place, on the basis of the effects of that behaviour on the principle of utility. In addition, Bentham discusses how society can best avoid behaviour that will cause bad effects in the first instance. He goes on:

By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency to which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government.¹⁰

Bentham argues that in acting in this manner, according to the principles of utility, we are not acting against the natural character of mankind, but the opposite.¹¹ For Bentham then, it is clear that the vast majority of people, by the 'natural constitution of the human frame' defer to the principle of utility in everyday life.

Why does Bentham go to such lengths to outline and promote this principle? The answer is simple, Bentham uses his principle not only to outline why we act in certain ways, but also how we ought to act in any given situation. Furthermore, Bentham is not only concerned with the actions of the individual in the community¹² (i.e., the psychological thrust of the principle, in terms of what motivates individuals) but also as a guide to evaluating the correct or morally good behaviour, and the judgement of the actions of others and society as a whole. The principle could then be applied to actually existing situations and formulations of organisation and policy.

4.3: Bentham and Free Speech

¹⁰ Bentham, *An Introduction to the Principles of Morals*, pp. 11-12.

¹¹ See Bentham, *An Introduction to the Principles of Morals*, pp. 13-14.

¹² The term community for Bentham refers to the 'sum total of individuals' in society and not a homogenous entity as with other philosophical analyses.

The principle of utility was for Bentham the cornerstone of his political philosophy; all of his prescriptions for good government and how it should operate to serve the people stem from this. Bentham argued that the main business of government was to secure the interests, indeed the happiness of society at large. Because individuals seek their own interests to promote individual happiness, there was potential for a conflict between public and private spheres in everyday life. It was the task of good government to harmonise these interests and increase the stock of happiness for the majority of society. For Bentham, law and government should exist in order to promote the happiness of the majority of the community. However, as with all governments, there was a risk of corruption, and if government was prone to corruption, and this was to surface, it would lead to bad government and bad government led to disharmony, and, *ergo*, a general lack of happiness for the majority of the population. Bad government, of course for Bentham, was not the operation of a rational system, but of an irrational system of government as it diminished the utility of its citizens. Thus, in order to secure good government, it was necessary for Bentham to ensure that corruption was at worst kept to a minimum and at best eradicated totally from public office. One of the main mechanisms that Bentham saw in achieving this aim, was the freedom to publicly censure government.

As we saw in Chapter One:3-i, in the typologies of free speech section, freedom of speech based on the accountability argument, is inherently political in that it seeks to keep a check on political authority by holding those in power accountable by public scrutiny and censure. The Benthamite or utilitarian defence of freedom of speech is framed within the context of security against misrule and this claim, as we have seen, was not made on the basis of an assertion of fundamental rights, but with an appeal to circumstances that would best maximise the utility of the majority. The basis of the case for a free press, was that the diffusion of knowledge via an unrestricted press, engendered enlightenment. For Bentham and other utilitarians, this was important as enlightenment would act as a guard against bad government and misrule. Bentham and his followers maintained an endorsement for freedom of the press as this was set within the context of security against misrule, and constitutional liberty. It was

within these frames of reference that the entire defence of freedom of the press was made. In his Preface to *A Fragment on Government* (1776) Bentham states this unequivocally when he writes:

Under a government of Laws, what is the motto of a good citizen? *To obey punctually; to censure freely.* This much is certain; that a system that is never to be censured, will never be improved: that if nothing is ever to be found fault with, nothing will be mended: and that a resolution to justify everything at any rate, and to disapprove of nothing, is a resolution which, pursued in future, must stand as an effectual bar to all the additional happiness we can ever hope for; pursued hitherto would have robbed us of any share of happiness which we enjoy already.¹³

It is clear from the above quotation, that for Bentham, the notion of public discussion and a free press is necessarily applied to the realms of government and Law. Anything outside this arena was not worthy of his attention. Consequently, within these terms, a free press was necessary for Bentham in order to act as a security against misrule, misrule that would have detrimental effects on the majority of the population. The utility then of free and open discussion which was optimised in a free press, was its incentive *for* and aid *to* good and responsible government. For utilitarians, freedom of the press was instrumental in achieving these aims (a matter that will be discussed in greater detail below). Bentham notes: 'So far is it from being true that no government can exist consistently with the exposure of defects in its administration; no *good*¹⁴ government can exist without such exposure.'¹⁵

Other similar work exists in which Bentham cites liberty of the press as a key element against misrule. In his letter to the Spanish people entitled: *On the Liberty of the Press---the approaching Eight Months' sleep of the Cortes---and*

¹³ J. Bentham, *A Fragment on Government* (Oxford: Basil Blackwell, 1967 [1776]), paragraphs. 16 & 17 p. 10.

¹⁴ My emphasis.

¹⁵ Bentham, *An Introduction to the Principles of Morals*, p. 14.

the Exclusion of Experience from the succeeding Cortes,¹⁶ Bentham continues a similar line of attack when he notes that ‘of *the liberty of the press*, operates as a check upon the conduct of the ruling few; and in that character constitutes a controlling power, indispensably necessary to the maintenance of good government.’¹⁷ Clearly, we can see here that Bentham was a democrat and as such, saw that good government cannot operate without the scrutiny of a free press. Given that members of government were prone to act in their own selfish interests as opposed to those of the people, openness in government was essential.

What consequences then does this critique have for utilitarianism in practice? The defence of free speech outlined above, and articulated by the disciples of utilitarianism below will help answer this question. I will start to answer this question by drawing attention to Bentham’s long time friend James Mill.

4.4: Utilitarianism’s Mentor: James Mill and Freedom of the Press

One of Bentham’s closest allies, and fiercest advocates of his utilitarian theory was James Mill (1773-1836). Not necessarily an original thinker in his own right, James Mill was more a conveyor of Benthamite principles, a lieutenant as Sir Leslie Stephen describes him.¹⁸ His son, John Stuart Mill, noted in his *Autobiography* that it was his father that ‘gave the distinguishing character to the Benthamic or utilitarian propagandism of that time.’¹⁹ James Mill’s contribution to the cause of utilitarianism was of a more systematic and pronounced character than that of Bentham. Mill’s Benthamite pupilage shaped and underscored his many writings. However, to argue that James Mill was a mere mouthpiece of Benthamite philosophy is to misjudge his contribution to utilitarian and liberal

¹⁶ Published in 1820.

¹⁷ J. Bentham, Letter to the Spanish People entitled *On the Liberty of the Press---the approaching Eight Months' sleep of the Cortes---and the Exclusion of Experience from the succeeding Cortes*. October, 1820, at <http://www.la.utexas.edu/labyrinth/bsp/bsp.101.html>

¹⁸ See Stephen, *The English Utilitarians*, Vol. II.

¹⁹ J. S. Mill, ‘Autobiography’, in *Collected Works*, edited by J. M. Robertson and J. Stillinger, (Toronto: University of Toronto Press, 1980), Vol. I, p. 105.

political thought. Mill's task was not only to provide a more systematic account of Bentham's utilitarianism, but also to apply it to particular instances in a more coherent and methodical way than Bentham, particularly in the sphere of government and law. Mill saw that the pleasure sought by men was not in the name of hedonism alone, but that the sort of pleasure afforded by right actions was one of virtue. Interestingly, and this point has significance later in this work, according to Mill, the key to virtuous conduct and good citizenship is prosperity. As Thomas notes, 'it was not enough to leave men brutishly pursuing their own desires. They must be shown to view them with a longer view.'²⁰ Thus theory and practice were brought together by James Mill who, heavily influenced by Adam Smith (1723-1790) and David Ricardo (1772-1823), sought to apply his formulation of 'virtuous' utilitarian logic to the popular economic theories of Smith and Ricardo, thus providing the key to long term betterment of humanity:

Political economy was the science which could make (men's) self interest enlightened. It could show men how to substitute for hedonism the virtues of thrift and self denial, by demonstrating not only how the social machine works, but how it could be made to work for their own good. It follows that the key to virtuous conduct is prosperity. Men might arise out of their state of subjection if they could be made to understand its causes.²¹

The foundation of James Mill's radicalism lay in the weight he places on education and the assertion of market forces, both of which lead him to be highly critical of the old orders of power.

Education was the cornerstone of a 'good society' both morally and rationally. Education for the masses would enable them to overcome the servitude and ignorance in which they were placed by the aristocracy *and* the government. It would mean that they would be in possession of the knowledge of the causes of their misery and respond accordingly by spreading 'reason among their subjects

²⁰ W. Thomas, *The Philosophic Radicals* (Oxford: Clarendon Press, 1979), p.104.

²¹ Thomas, *The Philosophic Radicals*, p. 104.

to grant arrangements more calculated to serve the general good.²² It was logically necessary that the greater number of men be made aware of their ignorance and greed, and shown the specific factors which would greatly increase their long term happiness; they could not, it was argued, hesitate but to act upon their better judgement and rational faculties. 'The problem was how to turn [...] institutions from serving the few to serving the many.'²³

The solution to this problem for James Mill was two-pronged. First it was necessary to show those that governed society that the great mass of people, if educated, would *not* 'get ideas above their natural status in life' but live according to their inherent abilities. For the rulers, the fear was that if provided with the means to become educated, the people would rise up and challenge the *status quo*. Conventional wisdom had it that the elite, - the aristocracy, government etc. - achieved their status through innate qualities which were passed down to them through the generations. What Mill attempted to show, and what was crucial to utilitarianism, was that all men have similar capacities for excellence but that these were influenced and swayed by environmental and social stimuli. Referring to the work of Helvétius, Mill argues that:

[...] if you take men who bring into the world with them the original constituents of their nature, their mental and bodily frame, in that ordinary state of goodness which is common to the great body of mankind,- leaving out of the account the comparatively small number of individuals who come into the world imperfect, and manifestly below the ordinary standard,- you may regard the whole of this great mass of mankind, as equally susceptible of mental excellence; and may trace the causes which made them to differ.²⁴

²² Thomas, *The Philosophic Radicals*, p. 120.

²³ Thomas, *The Philosophic Radicals*, p. 121.

²⁴ J. Mill, *Political Writings*, 'Essay on Education' edited by T. Ball, (Cambridge: Cambridge University Press, 1992), p. 159.

Thus, James Mill's argument rested on the notion that all men were born, more or less, with equal ability and cognition, and to deny them a stake in the governance of their affairs is tantamount to corrupt government.

The second strand of Mill's scheme was to 'educate the many in a knowledge of the laws regulating their happiness'²⁵ In other words it was Mill's programme, and that of other utilitarians, to develop a system of government which would be perceived, understood and contributed to actively and vigorously, so as to ensure that corruption was negated and all men could have a say in the affairs of the state, thus ensuring that Bentham's principle of utility was being utilised in legislative *and* moral terms.

In his *Essay on Government*, Mill's arguments can be summed up as a warning to those in government who do not place adequate safeguards in relation to their potential to abuse power. In short, the best form of government is a representative one, with in-built safeguards such as periodic re-election and the regular review of practices and procedures of its members.

Thomas makes an interesting related point about Mill's views on the aristocracy, the government and the 'knowledge' of government. He notes that for Mill the main threat to private property did not emanate from the masses as the aristocracy feared, but from the greed and avarice of the few. The key issue here, and an interesting point as regards Mill's perceptions of the 'majority', and the confidence which Mill has in his ideals, was the idea that when the government made mistakes, it was as a result of greed and other 'sinister designs'. However, when the 'people' or the majority made mistakes, it was as a result of their lack of education and ignorance of their own best interests; as will become clear below, the value that utilitarians place on education is great.

²⁵ Thomas, (1979), p. 122.

Though James Mill actively sought an application of utilitarian logic to social and moral issues, which were blended in with the science of political economy, his stance on freedom of the press and freedom of speech are clearly influenced by Bentham. Free discussion was necessary for good government. Not only was this the case for good government, but it naturally followed that it would be for the good of the people also:

Where the rulers are willing, but do not know how to improve the institution of government; everything which leads to knowledge of their defects is desirable to both rulers and the people. That which certainly leads to such knowledge is, that every man who thinks he understands any thing of the subject, should produce his opinions, with the evidence on which they are supported, and that every man who disapproves of these opinions should state his objections. All the knowledge which all the individuals in society possess upon the subject is thus brought, as it were, to a common stock or treasury; while every thing which has the appearance of being knowledge, but is only a counterfeit of knowledge, is assayed and rejected. Every subject has the best chance of becoming thoroughly understood, when, by the delivery of all opinions, it is presented in all points of view; when all the evidence upon both sides is brought forward, and all those who are most interested in showing what is weakest in it, and the strength of what is wrong, are, by the freedom of the press, permitted, and by the warmth of discussion excited, to devote to it the keenest application of their faculties.²⁶

4.5: Utilitarianism in Praxis: The Arguments for a Free Press

²⁶ Mill, *Political Writings*, 'Essay on Liberty of the Press', p. 127.

Having provided an outline of the general Utilitarian approach, as set out by Bentham and James Mill, it is now necessary for me to provide some depth to the discussion and put some meat on the bones of the utilitarian discussion of free speech. I will do this by examining journals, pamphlets and newspapers that had a strong utilitarian bent and analyse the arguments for freedom of speech therein. What follows in the analysis are examples of how utilitarian theory confronted issues that were relevant to the struggle for a free press during the early part of the nineteenth century, particularly from 1820 to 1840 when utilitarian philosophical discourse was at its most popular. As will be highlighted below, utilitarian justifications for press freedom are closely linked to its consequences, that being the delivery of society from corrupt government. This was mainly brought about by ‘education’ of the masses. The following three points raised in proceedings for the repeal of the stamp tax in 1835, outline the main elements of the argument:

1. That the prosperity of every community is dependent upon the knowledge diffused amongst its members: that the Newspaper has been justly deemed the great instrument of civilisation, but that the Stamp Duty tends to destroy the efficiency of that instrument, and to perpetuate the evils of moral and political ignorance.
2. That in the opinion of the present Meeting, if any portion of this tax be retained, a very numerous and important class will continue to be deprived of that knowledge of passing events, without which none can properly discharge the duties of citizens; and that a mere reduction of the Stamp Duty is to be depreciated as a half measure, which by lightening the burden, would only fix it the more firmly upon the shoulders of the People, without realising the benefits that would necessarily arise from a total repeal.
3. That Petitions be presented to both Houses of Parliament, praying for the repeal of the whole of the Stamp Duty upon Newspapers, and for the abolition, at the earliest possible period, of every other tax affecting the Diffusion of Knowledge.²⁷

²⁷ Pronouncements reproduced in F. Place, ‘The Taxes on Knowledge’ in J. A. Roebuck, *Pamphlets for the People*, (London, 1835), p. 8.

As noted, one major theme that preoccupied the utilitarian movement at this time was the beneficial effect of the diffusion of education and knowledge. This was the unhindered expansion and extension of knowledge and/or information useful to society at large. Indeed for utilitarians ‘to gain wisdom and knowledge has ever been held among the primary duties of man.’²⁸ ‘The object of education is twofold; to point out those objects in nature which are most important to be known, and those principles in conduct which are most proper to be observed; to teach what is useful to know, and what is most conducive to happiness to do: hence education is intellectual and moral.’²⁹ As we can see from the extract from the *Westminster Review*, it was generally argued that if society as a whole became better educated and free to access and judge opinions from whatever quarter, the net benefit to all of society would be great, both intellectually and morally. Great also, in that if the diffusion of knowledge was to go ahead unhindered then a movement towards some greater understanding could be achieved. Such a view was outlined by Leigh Hunt’s *Examiner* in its defence of utilitarian philosophy:

We have vindicated utilitarian doctrines from unjust aspersions and garbled representation, under a persuasion that they approach more nearly to the truth than any other political tenets that we have seen put forth, and as they are founded on intelligent principles, and are promulgated, we sincerely believe, with the purest intention of benefit to mankind.³⁰

Indeed, this principle was so fundamental to the *Examiner*, that it was persuaded to argue this tenet at every opportunity, as this particular theme emerges consistently in its pages between 1820 and 1840. For example, in a report on the proceedings of the ‘Society for the Promoting of Useful Knowledge and Members of Parliament,’ the *Examiner* printed the full speech of the Chair of the meeting, Dr. Birkbeck. Birkbeck’s speech unavowedly argued that the ‘surest’ way that

²⁸ *Westminster Review*, Vol., VII, April, 1827, p. 270.

²⁹ *Westminster Review*, Vol., I, Jan., 1824, p. 43.

³⁰ *Examiner*, June 28th, 1829.

mankind would benefit and prosper was if there was a thorough 'diffusion of knowledge' in society:

If I could doubt for a moment that truth is better than falsehood, or knowledge better than ignorance, I should not have acceded to the privilege of occupying this distinguished situation on the present occasion. I am so perfectly persuaded that man instructed in all his relations to his own species, becomes so much better qualified to perform the various duties which it is incumbent upon him to discharge, that I am persuaded the interests of mankind can in no way be better promoted than by contributing extensively and effectively to the diffusion of knowledge.³¹

This view was so important to the editors of the *Examiner*, John and Leigh Hunt, that debates followed furiously between advocates of the diffusion of knowledge and those against such 'dangerous tendencies'. As far as the *Examiner* was concerned, any hindrance of such a diffusion of knowledge was nothing less than a danger to public safety. In one bizarre example, in which evidence was provided to back up this view, the *Examiner* cites an occasion in which there were mass riots and outbreaks of civil disobedience occurring primarily due to 'mis-information' regarding the suspicious deaths of patients in a St Petersburg hospital.³² It noted:

The people seeing the frightful ravages of a scourge of which they had no experience and wanting information of its nature, have supposed that the sick were murdered in hospitals and that poisons were spread about in the streets; and under these wild impressions they have attacked the hospitals, (and assaulted persons provided with chemical preparations against infection). These are the excesses of ignorance which have aggravated the horrors of pestilence. It is clear that in times of public danger, it is of the first importance to have the channels of communication open to all classes [...].³³

³¹ *Examiner*, Feb. 6th, 1831.

³² This is a reference to the 'outrages' committed by the people of St. Petersburg concerning allegations that doctors, instead of treating the ill, were in fact intentionally contributing to their illness and demise.

³³ *Examiner*, July 31st, 1831.

In the example noted above, it is clear that the *Examiner* is trying to provide ‘proof’ of the social benefit of a free press, that open and unfettered discussion of events pertaining to the public interest should be made available to all. If not, then civil society and the fabric of law and order is at risk. What is also of interest is the notion that such information should be made available to all and not solely the middle class. This notion that all classes, in particular the working classes, should be provided with such information is explored in greater detail below.

Another popular theme in the pages of the *Examiner* was that the poor state in which the working man found himself was in fact a result of a lack of knowledge of matters of great importance to society as a whole. This view is highlighted in the following quotation, with its reference to the Chartist movement and other working-class organisations; the notion was that there was only *one* reason for their miserable plight; that being taxes, taxes on those works that would enlighten them and convince them of the proper manner of perceiving and recognising their problems and thus enable them to confront the hardships and obstacles that they faced:

We have seen rude labourers – those who are suffering from want of a general diffusion of knowledge – ignorant enough to conceive they were capable of benefiting themselves and their families, in their state of destitution, by destroying the very instruments by which fertility may be accelerated, and by which the food which they and we in common require may be brought to our homes and to theirs on the cheapest terms. They have done this because the schoolmaster has not been allowed to penetrate into their humble dwellings on account of the taxation which has been placed on education. The tax on the press. Mr. Lytton Bulwer moved – ‘That since knowledge is the source of both of morality and wealth, any tax upon wealth, and any tax upon knowledge must necessarily be highly injurious to the prosperity and happiness of the people.’ Of all knowledge, political knowledge was the most important, – it embodied every other knowledge – and without it there was comparatively none.³⁴

³⁴ *Examiner*, February 6th, 1831.

The crux then of the *Examiner's* argument, and that of other utilitarian newspapers and pamphlets, is that such taxes push the cost of newspapers out of the price range of those of a modest, low or even no income. As such, the same taxes which also prevent some newspapers, journals and pamphlets from coming into existence, have as their consequence the effect of obstructing society at large from progressing intellectually and morally, and of generating and maintaining ignorance in society, which is inherently un-utilitarian. This argument, as expected, was challenged from a number of sources, none less than from the judiciary, who argued consistently that education did nothing beneficial for the lower classes as crime had increased since its albeit limited expansion. One of its members who made his view known on this matter was singled out by the *Examiner* in a characteristically authoritative fashion:

To multiply the chances of information, and increase a tendency of reflection, is now, therefore, the only open and direct road to an improvement of morals and conduct in the great mass of the people; and it calls for far higher reasoning powers than those possessed by the waspish Judge [...] to deduce anything from occasional exceptions, until he can prove that such exceptions occur not proportionably to temptation in every other rank, and that baseness, dishonour, and yielding to it, are confined to the labouring classes alone.³⁵

The extension of education and the resulting diffusion of knowledge would, if allowed to flourish, prevent lawlessness and moral disharmony in society. Such a tendency would be halted and even reversed if the opposite was the case and taxes on knowledge remained. Citing an instance of public disorder in relation to violent conduct against millers and bakers over the 'high' price of bread, the *Examiner* goes to great lengths to argue that such violence would not have occurred if the masses were informed of such things as market prices and how prices were governed by supply and demand:

³⁵ *Examiner*, March 2nd, 1828.

What means, except through newspapers, have the people in [any] country of obtaining a knowledge of the laws which they are bound to obey? [...] Does not every new fact communicated to an unfurnished mind gain some portion from the dominion of brute passion; and every increase of his stock of knowledge render him less the mere creature of blind impulse? The spectacle of the barbarian who cuts down the tree to gather the fruit, is less deplorable than that of a minister who, for the sake of taxing, destroys or injures the channels of public information.³⁶

It thus follows for utilitarians that the extension of knowledge, and end to the means which hinder the spread of knowledge, greatly decreases the proportion of ignorance amongst the masses. The point is stressed again and again that the newspaper taxes have the effect of stifling knowledge and as such, encourage ignorance, moral malfeasance, barbarism and brutality in society at large.

The key assertion that arguments against the so-called taxes on knowledge were addressing, were that if given access to all knowledge including that which was termed 'evil' knowledge, the great mass of the people would be a great threat to civil peace and unfavourable consequences would prevail. This view was countered intelligently but with zeal by the utilitarian press, for example the following extract from the *Westminster Review*:

This is all which education, as we propose and view it, will do and can do; and surely it is the road to good, though we do not deny that it may or will produce partial evils; which, if it did not, it would be a case exempt from hitherto unfailing law of nature, that no good can be produced without a mixture of evil. *They*³⁷ will read bad books - of course; it would be very extraordinary if they did not: but to suppose that they will read no other, that the very end, on our part, is to teach, and theirs to learn, wickedness, is a calumny as foolish as it is unjustifiable.³⁸

³⁶ *Examiner*, May 2nd, 1830.

³⁷ My emphasis.

³⁸ *Westminster Review*, Vol., VII, April, 1827, pp. 305-6. A theme also present in this passage are the familiar paternalistic overtones of orthodox utilitarian discourse.

It is interesting to note that the focus on the negative effects of taxes on knowledge did not only impinge on the working man. Also those of more prosperous means were also disadvantaged by such taxes:

The effect of these taxes on newspapers, which thus amounts to about 260 per cent is such as to diminish the consumption even among the wealthier classes, and render the commodity less productive as a source of revenue to the Government.³⁹

The notion of profit and profit maximisation emerges also in a discussion of the monopoly of the established press. In an attack on the 'liberal' press, it is argued by J.A. Roebuck that:

Their sole object [...] is the preservation of a most odious monopoly, which protects the wealthy speculator in Newspapers against the consequences of a free competition with all that talent to which a free Press would open a field.⁴⁰

In limiting competition and maintaining a monopoly, mainly for the London based newspapers, the stamp taxes were in fact beneficial for a *minority* of the press, but it was argued that the effect that this benefit had for the few was outweighed by the disadvantages for the majority of newspapers. Not only was this inherently un-utilitarian, but in addition to the established press, any new and emerging titles would be stifled by the tax. The *Examiner* argued that the repeal of the stamp would be beneficial not only for the new emerging press but would also enhance the sales of the established press by generating a culture of enlightenment in which the thirst for knowledge and greater understanding would thrive and prosper:

By a proper reduction and better adjustment of the taxes, (not to speak of their [taxes] remission), there can be little doubt that the total sale of newspapers would be tripled, and even quadrupled. But this increase of sale would enable smaller existing papers to

³⁹ *Examiner*, May 2, 1830.

⁴⁰ J. A. Roebuck, A Letter to Daniel O'Connell Esq., MP, on Peerage Reform, in *Pamphlets for the People* (London, 1835), p. 13.

compete with the more powerful, and the extension of the field would make room for newcomers. The expense of setting up new papers would not be materially diminished, but their chances of success would be augmented, and many might succeed without doing any pecuniary injury to those already established. The latter might be stimulated to make new exertions to maintain their stations; but, in competition, they would start with all the advantages of an established name, long standing, previously acquired skill and character. Yet we commonly find, that the fear of losing the reputation for ability attendant on success (a reputation generally gained by the merest accidents of situation, and the absence of deserving competitors) together with the conciseness of the want of *stamina* to sustain complete competition, will prevail against the strongest evidence of extensive advantages to be obtained in new courses of action. [...] The taxes in question limit the circulation and profit of the media for the communication of the knowledge of their proceedings [in the House of Commons]; they present the full and the powerful competition by which the mode in which the accounts of these proceedings would be improved and perfected, and their fidelity be secured. The monopoly which the taxes creates secures two or three journalists (which, in practice govern the rest) the power of deciding what part and how much of the proceedings shall be made known to the public; it subjects public men to the caprice of an irresponsible tribunal, to which WINDHAM and CANNING were compelled to submit.⁴¹

Taxes on knowledge also inhibit the competitive spirit and the resulting 'good effects' of competition; the results are as such intrinsically un-utilitarian and the circulation of knowledge is stifled.

As noted in earlier chapters, the reformation of government was closely linked to the movement which sought a free unstamped press. We should be reminded that the main aim of the utilitarians was to proportionally increase the amount of happiness in society, and the main means of this was via an open and representative system of government. Thus knowledge, and in particular, knowledge of the system of government and the origination and operation of its Laws was crucial. The spread of knowledge not only referred to the spread and

⁴¹ *Examiner*, May 16, 1830.

access to education in society for all, but more importantly, and echoing Bentham, it referred to exposing the system of government to public scrutiny; knowledge of the mechanisms, structures, practices and dealings of government. Even after the Reform Act of 1832, reform was not seen as complete until the stamp tax was repealed. 'The value of reform depends upon the improvement of the people; and if that be obstructed, it is clear that ministers have no heart for the object they profess.'⁴² The *Westminster Review* notes that '[h]istory is nothing but the relation of the sufferings of the poor from the rich; except precisely so far as the numerous classes of the community have contrived to keep virtual power in their hands, or in other words, to establish free governments.'⁴³

One major utilitarian contribution to the opposition of the anti-democratic, anti-utilitarian stamp tax was provided by J. A. Roebuck MP, most notably in a series of journals brought together under the title *Pamphlets for the People* published in 1835 and 1836. This series of pamphlets embraced utilitarian philosophy and attempted to apply its theorems to the problems of living in a society where government operated unjustly and immorally, and placed restrictions upon those means by which people could become enlightened and morally sound citizens. The main thrust of the pamphlets was to educate and instruct the people in matters of moral and political importance. Within this remit, the object of the pamphlets was to '*instruct*' people in their relative duties as citizens; 'to point out to them the rights that they ought to seek to attain.' It was argued that 'mere' possession of power was not sufficient to ensure good government, what was also necessary was greater knowledge and sound morality. 'Morality, as applied to the conduct of individuals, is reducible to being the rule, the general observation of which would provide the greatest happiness amongst those who are to be affected by its consequences.'⁴⁴ Such morality and knowledge in the mass of the people

⁴² *Examiner*, Feb 26, 1832.

⁴³ *Westminster Review*, Vol., XI, July, 1829, p. 258.

⁴⁴ *Westminster Review*, Vol., XIII, Jan., 1830, pp. 246-247.

would ensure that society would improve, and it was towards this end the pamphlets were published. However, in order to ensure the widest possible circulation of the material amongst those who could least afford it, Roebuck avoided the stamp tax by publishing each pamphlet as a separate piece of work rather than as a newspaper or serial

In his first edition entitled *On the Means of Conveying Information to the People*, Roebuck outlines the principal justification of why the stamp tax was still in force. He notes that as well as a means of generating revenue for the government, the main reason for the stamp tax was ‘for the express purpose of preventing the people knowing what is being done by their so-called representatives.’⁴⁵ Citing Cobbett’s *Two Penny Trash* as providing the people with information on the ‘conduct of the then government’ Roebuck argues that the government and the aristocracy feared the opening up of government to public scrutiny and this was the reason that they placed controls on the press. He notes:

What the government feared was, that the mass of the people, that is, the labouring millions, should hear of and understand their proceedings. The grand object was to shut out the gaze of the multitude – to build up a high and thick wall between themselves and the millions.⁴⁶

The result was the Six Acts of 1819 which increased the levy on newspapers to four pence per copy. The effect of the acts was the destruction of ‘the means of intelligence to the people’ by increasing the price of the publications above the means of those people to which it was aimed, thus consigning the poor and powerless to ‘helpless ignorance’. One of the main tenets of Roebuck’s argument, and one which again makes the connection between knowledge and public order and crime, was that a responsible government should seek to lessen the amount of lawlessness and anarchy in society. Moreover, this should not be attained by

⁴⁵ J. A. Roebuck, ‘On the Means of Conveying Information to the People’ in *Pamphlets for the People* (London, 1835), p. 3.

⁴⁶ Roebuck, ‘On the Means of Conveying Information’, p. 3.

punishment after the fact; the laws should be made available to the public for their scrutiny. It was the government's responsibility to enlighten people as to what the law was so that they would know what was, and what was not socially acceptable behaviour. The law as it stood was at best unintelligible, even to those whose job it was to untangle its intricacies. Clarity in the realm of the law of the land was necessary in order that lawlessness decrease. Roebuck notes:

I assume that it is the first duty of a government to take the most effectual means of making the people obey all laws which justly protect person, property, and reputation. I also assume that it be the duty of government to seek rather for means of prevention, than of punishment; that is, it should not so much seek to deter the citizens generally from breaking the law through the terror created by punishing such as have broken it, as by taking precautions, that no one should have the desire to break it. Now one of the most effectual, one to the most necessary, means of creating this desire, is to teach the people what the law is.⁴⁷

However, Roebuck is not only providing justification of a repeal of censorship laws, i.e. the stamp tax, he is also providing an analysis of why such a system has emerged in the first place. He argues that not only does the government make the laws unintelligible to those who have 'not spent a lifetime studying it' and created a monopoly in its promulgation, but over time, the law and its related enactments become 'buried' and hidden amongst statutes and more statutes which are designed to protect the rich, but at the same time are unintelligible to the common man. Thus the working man is ignorant of that which will protect him from prosecution. Even when attempts were made to make the law clear to the less educated, these were deemed illegal.⁴⁸ Thus the working man was in a position that he could not escape from, as if the laws of the land were not clearly laid out for him to recognise his folly, how could he hope to make correct decisions about

⁴⁷ Roebuck, 'On the Means of Conveying Information', p. 4.

⁴⁸ Francis Place attempted to publish a small and inexpensive abridgement of the 'Combination Laws'. However, when he attempted to publish the tract he was told that such a publication would be illegal and subject to prosecution.

his conduct? Ignorance and dependency are states to which the working man was doomed because the methods to bring an end to such ignorance were beyond his means.

4.6: Utilitarianism and Good Government

Although highly critical of the laws and their application, utilitarians such as Francis Place and John Roebuck did not just direct their energies towards a critique of the system but also outlined in great detail what the essential features of a good, that is, morally sound and just government are:

A good government, I take to be that which - 1, insures to every man against oppression, whether foreign or domestic, his personal safety, his property, and his reputation; and - 2, which sagaciously employs the resources and powers of the whole people to perform such necessary labours as cannot so well be done by individual exertion.⁴⁹

However, this alone is insufficient if one is to attempt to formulate principles on which the actual practice of government should take place. Some detail should be provided, and Roebuck attempts just this in his pamphlets. The key for Roebuck again is knowledge, knowledge of that which will enable the people to govern well and morally and the knowledge which will enable them to ‘judge accurately’ the intellectual and moral worth of those whom they select to represent them:

I seek to make [the common man] an instructed and careful witness of the legislators proceedings: to give him, in the last resort, a control over the legislators conduct, and, by instructing, rendering him capable of truly appreciating it – approving where the legislator is right – blaming where he is wrong.⁵⁰

In writing on the subject of government, it was the intention of Roebuck and his contributors that those who read the pamphlets gain an understanding of what ought to be the nature and form of their own government. By highlighting the

⁴⁹ Roebuck, ‘On the Means of Conveying Information’, p. 7.

⁵⁰ Roebuck, ‘On the Means of Conveying Information’, p. 9.

follies and corrupt actions of government and pointing out the correct course of action it would become clear that those who read the material would have an understanding of a bad system of government and also what it should be replaced by:

It is not by simply telling a multitude, that they ought to be endowed with powers which the law now denies them [...] the steadfast spirit is the instructed one: he will patiently pursue his end who clearly appreciates its worth – whose enthusiasm springs from knowledge thoroughly grounded, not from a passing and fitful and evanescent idea.⁵¹

The notion of praxis, political action or activity arising out of the theory, is a strong current within the utilitarian creed. As I stated at the beginning of this chapter, for utilitarians it was not enough to philosophise and theorise grand themes and plans, philosophy should be put into practice as far as was possible. Part of this practical activity, as I have demonstrated above, was actively engaging in political and moral debate thus rendering the participant more able to judge, as well as adding to the stock of his political and moral knowledge.

4.7: Utilitarianism as a Vehicle for Social Control

It has been the purpose of this chapter to analyse the nineteenth century utilitarian arguments for freedom of speech, which was exemplified for them in an unrestricted free press. However, to finish my analysis here would be to fall into the trap of so many other writers on utilitarianism and freedom of the press, namely to avoid confronting some of the strong elitist and paternalist tendencies that were inherent within utilitarianism. I argue here, that for the most part, utilitarian arguments for freedom of the press were intricately connected to an agenda of social control of the lower orders in order to safeguard the middle-class political and economic ascendancy. This critique will examine three particular elements of the utilitarian praxis of freedom of speech, all of which demonstrate,

⁵¹ Roebuck, 'On the Means of Conveying Information', p. 10.

at best elitist, at worst authoritarian attempts at social engineering. Firstly I examine the connection between freedom of the press, education and the new science of political economy, arguing that the free press movement, using education and Enlightenment as a disguise, attempted to socialise the working classes into passive acceptance of *laissez-faire* economics. Secondly, I point to how this was done, mainly by focussing on the assertion of utilitarianism as a rational system which would counter the ‘baser’ irrational instincts of the lower orders. I argue that Rationalism and its particular place within utilitarian praxis is used as a vehicle for social order by undermining the irrational aspects of human activity especially those of the working classes. Finally, I look at how a utilitarian inspired ‘free press’ sought to maintain social order by acting as moral censor.

i, Political Economy

If there is a sign of the times upon which more than any other we should be justified in investing our hopes of the future progression of the human race in the career and improvement, that sign undoubtedly is, the demand which is now maintaining itself on the part of the public for instruction in the science of political economy.⁵²

As we have seen, taxes on knowledge and their censorial effects were, as far as the utilitarians were concerned, responsible for such things as the creation and maintenance of poverty through a notion of enforced ignorance; if the masses were educated in relation to the reason for their suffering, their suffering would cease. Poverty, destitution, social disharmony were not directly perceived as a product of vast differences in material conditions between the minority of wealthy, and the vast majority of the poor. As I have highlighted, inadequate living and working conditions, according to the utilitarians, were due to lack of education, and lack of access to ‘useful knowledge’. It is clear that utilitarians saw that a free press could promote public enlightenment in the sphere of politics

⁵² *Westminster Review*, Vol., IV, July, 1825, p. 88.

and civil society,⁵³ they also considered that censorship was prone to other ‘dis-utilitarian’ consequences. For example, in countries that had no freedom of the press, violence and revolt were more than a possibility. In Britain, public displays of anger and outrage were ‘blamed’ on lack of education for the working man, brought about by the taxes on knowledge:

Ministers are willing, nay desirous, to prevent the access to knowledge, which can alone permanently extinguish the evil passions generated by ignorance, and lead to events even more deplorable. Lamentable, indeed, is it to see such men refuse to do that which can be so easily done to preserve the peace of the country, and save from ultimate destruction, even their own property. Lamentable is it to be compelled to observe the obstinacy with which they cling the use of brute force to compel obedience to bad laws, when, by repealing those laws, the force of knowledge would alone be necessary [...].⁵⁴

This analysis was not made in terms of advancing the material conditions of the early nineteenth century poor, but to imbue them with a notion of virtue - to be virtuous citizens in an active civil society. Education then for utilitarians is the main mechanism by which ‘evil passions’ could be extinguished. Note also that the protection of property by adhering to ‘good law’ is also a concern for utilitarians, as is also evident in the above quotation.

As noted in Chapter Two, the link between the struggle for a free press can be traced in the transition from feudal systems of social organisation, i.e. from rural feudal forms to urban industrial systems of social order centred around the free market, the rise of capital and the transition of social forms of organisation that would ensure the smooth running of capital. This feature of the struggle for freedom of the press can be observed also in the utilitarian case for a free and unstamped press. For example, the *Westminster Review* is keen to make the connection between the press and capital when it writes: ‘The Newspaper press in

⁵³ This theme is resonant in mainstream utilitarian and liberal thought during this period.

⁵⁴ J. A. Roebuck, ‘Taxes on Knowledge’ in *Pamphlets for the People* (London, 1835), p. 7.

this country, [is] one of these extraordinary combinations by which capital activity and intellect, have produced wonderful results.’⁵⁵ Also commenting on James Mill’s *Elements of Political Economy*, the *Westminster Review* exalts the new science of political economy with reference to government legislation on free trade. ‘To stimulate to the utmost improvements in the means of production, no encouragement beyond that of securing, to every individual the fruits of his industry and ingenuity is requested at the hands of the legislature.’⁵⁶

Closely linked to the pronouncement of utilitarian values were notions of free enterprise and the unrestricted growth of capital. The economic theories of the late eighteenth century and early nineteenth century were perceived as the rational means of conducting economic affairs and this was reflected in utilitarian claims for a free press. As we have seen, particularly in their influence on James Mill, ‘the classical economists, especially the three most famous of them, Adam Smith, Thomas Malthus and David Ricardo, were all utilitarians.’⁵⁷ Indeed ‘the division of labour and the free market produce the greatest amount of happiness compatible with [the then] existing system of property.’⁵⁸ As a precursor to later utilitarian arguments, Adam Smith himself writes – ‘It is the necessary, though very slow and gradual consequences of a certain propensity in human nature which has the view of extensive utility; the propensity to truck, barter, and exchange one thing for another.’⁵⁹ Bentham also in his *Defence of Usury* published in 1787 expounded the virtues of *laissez-faire*, indeed Steintrager argues that ‘Bentham knew he was going beyond Adam Smith in making the case for *laissez-faire*.’⁶⁰

⁵⁵ *Westminster Review*, Vol., X, Jan., 1829, p. 216.

⁵⁶ *Westminster Review*, Vol., II, Oct., 1824, p. 304. See also an article on the abolition of the Corn Law, *Westminster Review*, Vol., VI, 1826, pp. 373-404.

⁵⁷ Plamenatz, *The English Utilitarians*, p. 111.

⁵⁸ Plamenatz, *The English Utilitarians*, p. 113.

⁵⁹ A. Smith, *The Wealth of Nations* (London: Dent, 1910), p. 12.

⁶⁰ J. Steintrager, *Bentham* (London: George Allen Unwin, 1977), p. 63.

Utilitarianism's emphasis on education can be traced to ideological assertions also. Vaughan and Scotchford-Archer highlight the distinctive nature of educational goals based around class interests. They note the close association between economic growth and educational development arguing that:

Utilitarian philosophy allied to classical economics epitomised and sought to legitimate the ambitions of the emergent middle-class. [...] In this context, the approach of the middle-class to education was double edged, since control over the instruction of workers was a major motive for its own assertion. Ideally, it sought to replace the amateur tradition of the secondary and higher education by useful instruction and to replace religious by economic indoctrination in the elementary schooling of the working-class. In the first instance emphasis on a broader curriculum, more relevant to the needs of industrialisation, served to support the claim that the middle-class was the most useful section of society. In the second, desires to communicate classical economics to workers reflected a conception that an understanding of its laws would protect property from attacks against it.⁶¹

It has been demonstrated that one of the key impulses of the utilitarian defence of free speech lay in its commitment to the war of the unstamped. It is clear that one of the key motivations that such a 'war' was waged, was so that it would open up the newspaper market to competition and therefore apply in vogue economic theories to the arena of public debate in the lucrative newspaper industry. This could not have come about on its own but had to be part of the wider fight for the reform of government and the struggle for representative democracy. The case for democracy could not be made without a free press. As we have seen in Chapter Two which focussed on the historical nature of the struggle for a free press, such a 'battle' was inherently part of wider social and political movements which were related to the end of one form of social formation, feudalism, and the beginning of another - industrial capitalism. Associated to this was the gradual end of landed rule towards a primitive form of paternalistic democracy inspired by the

⁶¹ M. Vaughan and M. Scotchford-Archer, *Social Conflict and Educational Change in England and France, 1789-1848* (London: Cambridge University Press, 1971), p. 77.

Philosophic Radicals. And as we have seen, ‘Bentham [and his followers] considered the unrestricted circulation of public information to be an indispensable link between the rulers and the ruled in a political society, binding them together in a secure relationship based upon the conjunction of duty and interest on each side.’⁶² However, this link was one based not on mutual interest of the poor, but what could be termed wider commercial interests that sought a measure of social control over the poor, particularly for advocates of the new political economy such as James Mill and David Ricardo.

In addition to the defence of the free market, a strong current of paternalism ran throughout utilitarian discourse, fundamentally undermining their proclaimed democratic aims. It has often been considered by scholars that the practical outcome of utilitarianism lends itself heavily to a form of paternalistic elitism. This form of elitism is particularly expressed in the so called democratic ideals of utilitarians like James Mill. As Bramsted and Melhuish note, James Mill took the view that ‘certain exclusions from the franchise might be made without damage to good government.’⁶³ They continue that the ‘only thing which made it possible for him to countenance a wide popular franchise was his declared belief that the opinions and votes for the bulk of the electors would be guided by the educated middle-classes. He assigned this section of the community a paternalistic responsibility for influencing and directing the minds of the people [...]’.⁶⁴ James Mill is explicit in his assertion that the middle classes, or middle rank could set examples for the so-called lower orders of society. Thus the middle classes assume the role of leadership over the working classes:

There can be no doubt that the middle rank, which gives to science, to art, and to legislation itself, their most distinguished ornaments,

⁶² D. G. Long, *Bentham on Liberty, Jeremy Bentham's Idea of Liberty and its Relation to his Utilitarianism* (Toronto: University of Toronto Press, 1977), p. 201.

⁶³ E. K. Bramsted, and K. J. Melhuish, eds., *Western Liberalism, A History in Documents, from Locke to Croce* (London: Longman Group, 1978), p. 23

⁶⁴ Bramsted and Melhuish, *Western Liberalism*, p. 23.

the chief source of all that has exalted and refined human nature, is that portion of the community of which, if the basis of Representation were ever so far extended, the opinion would ultimately decide. Of the people beneath them, a vast majority would be sure to be guided by their advice and example.⁶⁵

Mill continues:

What signifies the occasional turbulence of a manufacturing district, peculiarly unhappy from a very great deficiency of a middle rank, as there the population almost wholly consists of rich manufacturers and poor workmen; with whose minds no pains are taken by anybody; with whose afflictions there is no virtuous family of the middle rank to sympathise; whose children have no good example of such a family to see and admire; and who are placed in the highly unfavourable situation of fluctuating between very high wages in one year, and very low wages in another?⁶⁶

Arblaster notes that James Mill in particular 'gave explicit expression to the widely held belief that the middle-class was peculiarly fitted to provide leadership and government for the whole of society.'⁶⁷ This sentiment is echoed elsewhere - 'on the one side they faced the establishment numerically small, which they sought to persuade, or rather shame into rational behaviour by sheer weight of the argument. On the other side was what they looked on as an essentially passive body of the uninstructed, waiting like clumps of wet clay to be moulded by the potter's fingers.'⁶⁸

'Nowhere in the long list of his expression of support for freedom of the press or public discussion does Bentham contradict, endanger, or qualify his commitment to control the frame of reference within which public debate is carried on - control by means of indirect legislation, scientific ethics, and a thoroughly

⁶⁵ Mill, *Political Writings*, 'Essay on Government', p. 41.

⁶⁶ Mill, *Political Writings*, Essay on 'Government', p. 42.

⁶⁷ A. Arblaster, *The Rise and Decline of Western Liberalism* (New York: Basil Blackwell Inc. 1984), p. 264.

⁶⁸ Thomas, *A Long Time Burning*, p. 159.

programmed education system.’⁶⁹ This notion of leadership, or more precisely, authoritative guide, is in a similar vein to Plato’s philosopher kings. This was clearly visible in terms of education, that being the enlightened knowledge of the few dispersed amongst the greater number for wider public consumption. Thus we see that, rather than education for the masses providing fulfilment and enlightenment for all, education can be seen as a form of authoritative guidance provided by an elite few in the name of rationalism and utility, and adding weight to the economic imperative of the free market, this sentiment being especially prevalent in the work of James Mill.

It is not political economy that creates inequality, but lack of education, as James Mill points out when he states that ‘all the difference which exists, or can ever be made to exist, between one class of men, and another, is wholly owing to education.’⁷⁰ He continues

But large numbers or bodies of men are raised to a high degree of mental excellence; and might, without doubt, be raised to still higher. Other large bodies, or whole nations, have been found in so very low a mental state, as to be little above the brutes. All this vast distance is undeniably the effect of education.⁷¹

It is important to note, however, that to represent utilitarian praxis as an exact representation of utilitarian philosophic doctrine, is to overlook key differences in both. Although roughly allied, the philosophy and praxis of utilitarianism diverge at crucial points. For example, the democratic spirit of Bentham’s position should not be confused with the praxis of utilitarianism from activists such as James Mill, John Roebuck and Francis Place. Bentham’s commitment to democracy, openness in government and greater representation is, as we can observe above, actually undermined by the historical application of utilitarian principles from many leading figures of the Philosophic Radicals. The paternalism of James Mill

⁶⁹ Bramsted and Melhuish, *Western Liberalism*, p. 199.

⁷⁰ Mill, *Political Writings*, ‘Essay on Education’, p. 161.

⁷¹ Mill, *Political Writings*, ‘Essay on Education’, p. 161.

and company should be seen in a slightly different light to the democratic aspirations of Bentham. This sentiment should also be borne in mind in terms of the discussion of freedom of speech. Paramount for Bentham is his ideal of democratic representation facilitated by freedom of speech and the accountability argument.⁷² Such an ideal is slave to the utility argument in that Bentham viewed utility best being served by an open representative democracy. This said, the history of the praxis of the utilitarian justification of freedom of speech is tainted with anti-democratic paternalism and an overarching commitment to *laissez-faire* by Bentham's followers, and as such we can see that Bentham's logic of utilitarianism was different from its historical actuality. The utility of socialising the working-classes into passive acceptance of *laissez-faire* is clear, there was much to gain both economically and politically in such a process.

I have sought in this section, to make apparent the anti-democratic, indeed almost authoritarian spirit of the praxis of utilitarianism, emphasising the paternalist element and the connected socially divisive economic dimension of utilitarianism's praxis which is particularly resonant in the work of James Mill. However, it is not sufficient to isolate the assertion and socialisation of *laissez-faire* economics as the only mechanism by which utilitarians sought to establish a strong political power base. The role of rationalism itself also plays an important part in indoctrinating the working-class and providing further ammunition for utilitarianism.

ii, Rationalism as a Political Force

As I have shown, the fundamental defence of utilitarian ethics and codes stems from an unabashed adherence to rationalism, as rational principles should be employed at all time and in all circumstances. The following quote from the *Westminster Review* emphasises this in its critique of the then existing modes of

⁷² See Chapter One.

education, as the paper outlines its belief in the application of rationalism in education:

Both in the selection of subjects to be taught, and in the mode of teaching then, which has been perpetuated then, even to the present day, there is exemplified a most extraordinary ignorance of the very elements of rational instruction.⁷³

However, particularly in the sphere of education and in relation to what constitutes knowledge, this unswerving adherence to rationalism is not of course unproblematic. The utilitarian approach to learning was didactic in form. That is - rational knowledge is transferred or transmitted by means of educational media, be they an orthodox system of mass education, small group instruction, or through a free press. However, if one considers that learning might consist of more than the application of rational principles and objective analysis; and be subjective, reflective, expressive etc. then to adhere to a purely strict logically inspired educational process would exclude all those uniquely human traits that also contribute to greater understanding. For utilitarians, 'mankind's natural desires' should be slave to reason, these natural desires should be brought under control at all costs. This weight put on an almost super rational state of being, even if such as state was/is attainable by an adherence to utilitarian logic, works against its own utility in providing a sound basis for organising society in that to assert pure reason as the sole measure for all human actions, utilitarians are negating distinctive features of human existence: those being the capacity for emotion, irrationality, subjectivity and passion to name just some, all of which do not immediately stem from a rational outlook but which can also contribute to states of well being. Any attempt to promote the greatest happiness of the greatest number must recognise that happiness can consist of such things as emotion, subjectivity and other non-rational states of being. John Stuart Mill eventually recognised this in his essay on utilitarianism when he identified the notion of

⁷³ *Westminster Review*, Vol., I, Jan., 1824, p. 46.

higher and lower pleasures. For the Philosophic Radicals, however, such a notion was ridiculous.

However, in its adherence to strict logical systems we also have another more than convenient method of asserting utilitarian power over the 'lower orders'. Being slave to their irrational and so-called baser instincts, the 'lower orders' according to the utilitarians were prone to act in ways which were detrimental to their best interests. Again we see an assertion that in order to overcome their miserable plight, they should be infused with a super-rational outlook. If this was not possible however, which it usually was not, guidance from those who knew best was always at hand. Again, this is a convenient way of affirming the middle and educated classes power over the working classes. Interestingly, this tendency of paternalistic rationalism is recognised in the pages of the *Edinburgh Review*:

We have long been of the opinion that the utilitarians have owed all their influence to the mere delusion – that, while professing to have submitted their minds to an intellectual discipline of peculiar severity, to have discarded all sentimentality, and to have acquired consummate skill in the art of reasoning, they are decidedly inferior to the mass of educated men in the very qualities in which they conceive themselves to excel.⁷⁴

Thus not only do we have an almost anti-human approach to politics and society, in that it negates a large part of what constitutes human activity, namely emotion and subjectivity etc. we also have another mechanism of asserting power over the so-called lower orders.⁷⁵ The irrational should be discarded and brought into line with the rational, and who is better suited to facilitate this process than those who are versed in the super-rational language and philosophy of utilitarianism. Though not unconnected to the discussion above on education and the assertion of the free

⁷⁴ *Edinburgh Review*, 'On the Utilitarian Theory of Government, and the Greatest Happiness Principle,' L, Oct. 1829, p. 99.

⁷⁵ Here I refer again to the argument of the previous section (4:7, i).

market, we can see rationalism itself is asserted as a particular method of social control which provides a means to a level of social engineering.

iii, The 'Free Press' as Moral Censor

Finally we now turn to the role of utilitarian praxis operating as moral censor. In order to do this we must first remind ourselves of the ontological basis of the utilitarian argument. The notion of a free press and the idea of free speech for utilitarians, was not to be sought after as a freedom in itself, as utilitarians saw no intrinsic value in freedom for freedom's sake, to be fought for and gained as a fundamental human right. There is no consideration of free speech outside the boundaries of the issues of law and morality. The utilitarians saw 'freedoms', including freedom of the press, as goods only in relation to their usefulness or the effect they have on the 'correct' or 'rational' operation of a political system. As we have seen, for utilitarians, the freedom of the press was necessary as a tool or weapon against corrupt and insincere governments, not as a value in itself. As Long, in his discussion of Bentham, explains '[o]nly within the boundaries established by his science of human nature would it be considered expedient to stimulate public discussion and debate.'⁷⁶

Given that all aspects of personal and public life should be considered in relation to their propensity to advance utility, and given that those acts which do not provide for general utility should be avoided, it is therefore conceivable that if it was considered that freedom of the press, (or any other freedom) detracted from the principle of utility and produced dis-utilitarian consequences, it should be avoided. If censorship contributed to the general good of society, then indeed censorship would be advocated by utilitarianism. If it was beneficial for the community to have restrictions on free and open discussion, the utilitarians would have no hesitation in enforcing such restrictions in their legal code.

⁷⁶ Long, *Bentham on Liberty*, p. 198.

In this way utilitarian justifications for free speech are turned on their head and a justification for censorship is provided which is logically consistent with utilitarianism. The utilitarian defence of freedom of speech therefore, is not a defence of particular rights; it is necessarily attached to actions which promote or enhance the general good and could be reversed if the case was made in terms of utility.

This being said, the fact remains that:

1. Bentham was a democrat.
2. The reason he was a democrat was due to the fact that he saw representative democracy as the best means of achieving the greatest happiness of the greatest number.
3. He saw that those in power were best checked through open discussion and public debate.
4. Such accountability is only possible via a free press.

How can we square the circle? As we have seen, particularly for James Mill, utility maximisation can emerge in a situation in which the educated classes provide leadership for the lower classes. It is not impossible that such leadership may see fit to discourage, censor, or prohibit various forms of 'knowledge' that might have the effect of challenging its position. Thus particularly for Mill, whose brand of paternalism has less democratic leanings than that of Bentham, some form of censorship may be expedient in order to 'protect the lower orders from themselves'. Indeed it may be in certain circumstances that in order to maximise utility, certain constraints may be placed on individuals which could amount to censorship.

If one were to imagine for example, a situation where a form of democratic paternalism existed and there were no restrictions on the press, and the status quo was threatened in some way by a small minority, it is not beyond the realms of possibility that some form of moral censorship could be advocated to 'protect' the

interests of the majority of the people. Thus censorship via the press could be seen as having utilitarian consequences and would be perfectly justifiable within these terms. The fact that Utilitarians were committed democrats could be placed under some pressure by the fact that they were generally more committed to the maximisation of utility. As such, certain forms of censorship, particularly moral censorship, are permissible within utilitarianism if such censorship aids greater utility. I suggest that this idea can be demonstrated by applying Bentham's vision of the Panopticon to wider civil society where control over civil society is asserted via a strict moral code that is derivative from strict utilitarian ethics. In order to see clearly how the force of utilitarianism can seek to impose some sense of moral order, a brief discussion of the mechanism is necessary.

The Panopticon is a structure that is constructed in such a way that its inhabitants - madmen, vagabonds, criminals, workers or school children - are continuously aware that their actions are under surveillance by those in authority, thus regulating their behaviour appropriately to avoid punishment or retribution. As Foucault notes, 'visibility is a trap'.⁷⁷ All actions of those confined within this structure are thus controlled according to the wishes of the guardians of the Panopticon because they are clearly observable. Two key features need to be present if the Panopticon is to succeed, firstly, authority and power should be visible, so that the inmate is aware of possible retribution; and secondly this power should be unverifiable, so that the inmate is never totally sure that they are being watched. This is achieved within the institution by a central tower contrived to ensure that guardians can see everything without being seen, and importantly, the inmates of the Panopticon are aware of this. To be sure for utilitarians, 'the Panopticon, is a marvellous machine which, whatever use one may put to it, produces homogeneous effects of power.'⁷⁸ But how does this 'machine' turn the utilitarian defence of a free press into a vehicle of censorship? If one transports

⁷⁷ M. Foucault, *Discipline and Punish, the Birth of the Prison* (London: Penguin Books, 1977), p. 200.

⁷⁸ Foucault, *Discipline and Punish*, p. 202.

the principles of the Panopticon to wider society then the mechanisms of control become evident. Again, it is worth quoting Foucault:

This Panopticon, subtly arranged, so that an observer may observe, at a glance, so many different individuals, also enables everyone to come and observe any of the observers. The seeing machine was once a sort of dark room into which individuals spied; it has become a transparent building in which the exercise of power may be supervised by society as a whole.⁷⁹

Thus, power is generalised and the watchers become the watched, each regulating each others behaviour within a rigid moral framework. One's behaviour in 'open' civil society is self-regulated or self-censored, as social agents are ever aware that whilst they are the surveyors of other's actions, they are at the same time open to scrutiny of others. Thus a form of covert censorship exists within a social entity, justified by the moral weight of utilitarianism's epistemology.

However, what has a discussion about the Panopticon, which of course is a system of penal control, to do with a discussion about censorship within wider society? Are they not two totally separate entities? Surely the description of the workings of the Panopticon are to be applied to the penal system alone, and not to society at large? However, if one looks more closely at particularly James Mill's discussion of freedom of the press and his discussion of offences which should be open to prosecution, we find a discussion of self censorship strikingly similar to that imposed within the Panopticon.

It is worth exploring this in some detail. In his discussion of libel law James Mill initially argues that laws that pertain to regulate the press are 'imperfect' as they actually sanction the means of mediation as well as the actual perpetrator of a 'libel'. The law he continues is no good at ascertaining the truth, and as such, the law is 'imperfect'. Where a libel has been committed, the test of the libel should

⁷⁹ Foucault, *Discipline and Punish*, p. 207.

be placed at the bar of truth and if some offence has indeed taken place, then reparation should occur.

The true expedient, therefore, is to render the machinery of the laws so perfect that the penalties which they denounce may always be sure of execution; and then hardly any thing beyond compensation to the individual, and the abstraction of any additional gain which might have been made by the propagation of slander, would be necessary to repress all offences against the reputation of others, to which the motive was constituted by pecuniary gain.⁸⁰

Within utilitarian logic, this seems perfectly reasonable. However, in the same article, Mill talks about the press in such a way that it becomes not a mere mechanism of mediation, but a vehicle of censorial social control which ensures adherence to a specific moral code.

Mill is clear that the press can be the mechanism of social control by asserting notions of private censorship. He notes that if a man has committed an act or acts that are not illegal, but are acts which 'members of society disapprove and dislike',⁸¹ then 'the prospect of the immediate and public exposure of all acts of this description, would be a most effectual expedient to prevent their being committed.'⁸² He goes on

Men would obtain the habit of abstaining from them, and would feel it as little painful to abstain, as at present it is to any well educated person to keep from theft, or those acts which constitute the ill manners of the vulgar.⁸³

Furthermore:

The motive almost every man would derive from the knowledge that he had the eyes upon him of all those, the good opinion it was his interest to preserve; that no immoral act of his would escape their

⁸⁰ Mill, *Political Writings*, 'Essay on Liberty of the Press', p. 104.

⁸¹ Mill, *Political Writings*, 'Essay on Liberty of the Press', p. 106.

⁸² Mill, *Political Writings*, 'Essay on Liberty of the Press', p. 106.

⁸³ Mill, *Political Writings*, 'Essay on Liberty of the Press', p. 106.

observation, and a proportionate share of their hatred and contempt.⁸⁴

We can now see Foucault's systematised model for social control within the very mechanisms of the press. His assertion that human autonomy is jeopardised is real, in that the press acts as the moral guardian adhering to a strict utilitarian moral framework. It is clear that what James Mill has in mind here, is a version of the Panopticon applied to wider civil society, with the public gaze, facilitated by the press acting as the gaoler and prison warden. Not only do we have James Mill expressly advancing a notion of the Panopticon in the guise of the press to be applied to wider society, we also have him asserting a specific type of morality, a morality that is tied incontrovertibly to utilitarian consequences.

Every body believes and proclaims, that the universal practice of the moral virtues would ensure the highest measure of human happiness; no one doubts that the misery which, to so deplorable a degree, over spreads the globe, while men injure men, and instead of helping and benefiting, supplant, defraud, mislead, pillage, and oppress, one another, would thus be nearly exterminated, and something better than the dreams of the golden age would be realised on the earth. Toward the attainment of this most desirable state of things, nothing in the world is capable of contributing so much as the full exercise of truth upon all immoral actions, - all actions, the practice of which is calculated to lessen the amount of human happiness. According to this view, the justice of which it is impossible to dispute, the evil incurred by forbidding the declaration of truth upon all immoral actions is incalculable.⁸⁵

Here then we can observe that a utilitarian free press can at the same time be a censorial press, coercing, however subtly, the moral framework of society and imposing upon society, the rules of the game. This is how, for utilitarian praxis, an assertion of freedom of the press is at the same time an assertion of moral censorship. In the same way that the press is used to censure government within the context of the accountability argument, individuals too are held accountable

⁸⁴ Mill, *Political Writings*, 'Essay on Liberty of the Press', p. 107.

⁸⁵ Mill, *Political Writings*, 'Essay on Liberty of the Press', p. 109.

against the moral force of utilitarianism. As Jansen notes – ‘such a system acts as a model for centralised control which could circumvent open (visible) conflicts between the masses and moral agents.’⁸⁶

4.8: Conclusion

It has been my intention in this chapter to examine the utilitarian philosophy and praxis of free speech during the nineteenth century. I have provided examples of utilitarian justifications of a free and unstamped press and gone on to examine the nature of these within the context of changing historical circumstances of the nineteenth century. The main utilitarian arguments for freedom of the press can be assigned to the accountability argument identified in Chapter One, those being that those in power in democratic institutions should be held accountable in their operation of public duties. A partial component of such accountability is provided via a free press. I have also identified the role of education within the utilitarian justification of freedom of the press, providing examples of utilitarian literature that sought to justify freedom of the press because of its necessary contribution to educational welfare and its connection to the welfare of society as a whole.

However, I have gone on to identify utilitarian praxis of freedom of the press as one that is inherently socially divisive and which sought to assert a middle-class agenda which is represented in an assertion of *laissez-faire* political economy. Moreover, the praxis of freedom of the press is identified as a praxis that is intimately connected to an agenda of social control, especially of the so called lower orders via an emphasis on moral and political paternalism. Such paternalism was manifested within the context of discussions about political economy, education and moral censorship. From this analysis, it is clear that the philosophical justification of freedom of the press and its actual praxis is located

⁸⁶ S. Curry Jansen, *Censorship* (Oxford: Oxford University Press, 1991), p. 22.

within the ongoing assertion of *laissez-faire* during the early part of the nineteenth century.

Although Bentham sought to promote democracy as the best means of achieving utility within society, Bentham's disciples articulated utilitarianism in such a way as to undermine the democratic spirit of Bentham's vision. By undermining Bentham in this way, we can see that the praxis of utilitarianism, specifically with regard to freedom of the press is keenly paternalistic and ascribes a sense of moral obligation that sought to constrain rather than liberate the whole of society. Thus we can see the restrictive force of utilitarianism, not only philosophically but practically. The bounds of rationalism, the force of moral obligation and the weight of economic doctrine ultimately forges the praxis of utilitarianism into a force of authoritarianism that fundamentally undermines any truly democratic spirit that utilitarianism may once have had by asserting the moral and political weight of utilitarianism. If one was to dissent from such sentiments the 'free' press acting almost as the social Panopticon would expose such irrationality and subversion. What we have then is a utilitarian praxis of freedom of speech that is inherently undemocratic, elitist and socially divisive, with particularly the working classes bearing the brunt of the utilitarian dogma. As Jansen notes the spirit of rationalism within utilitarianism constrains rather than liberates those whom it argues will benefit most:

[...] minds changed, cultivated, or colonised to facilitate the purposes, priorities, and plans of distant elites are not free minds. Panopticon control systems do not satisfactorily resolve the contradictions of freedom and control. They betray the egalitarian promise of the Enlightenment and place arbitrary constraints on human autonomy. They render the controller, warden or censor invisible and thereby permit him/her to operate outside the rules of participatory democracy. Moreover, they endow the sense of censorship with a "phantom objectivity" which makes it extremely resistant to criticism.⁸⁷

⁸⁷ Curry Jansen, *Censorship*, p.24.

Summary

This chapter examines the utilitarian arguments for freedom of speech and their praxis during the nineteenth century. The context of this can be seen as being part of wider shifts in emphasis from landed rule to a form of paternalistic democracy and the assertion of the market system. I have gone on to provide examples of utilitarian defences of a free and unstamped press and to examine the nature of these defences. The criticisms of the utilitarian defence of free speech are made, primarily in the context of the theme of this thesis, that being that the struggle for free speech during the nineteenth century and its varied philosophical constructs, are the result primarily of changes in social and material conditions brought about by the changing nature of political economy and the necessary elements of such an economy are partially asserted and articulated via utilitarianism. Such elements are the vindication of *laissez-faire* political economy, the socialisation of economic doctrines within the context of specific moral and social education and the maintenance of such a system by adherence to a strict moral code enforced partially by the press themselves. I show that though initially utilitarianism, via Bentham, provides a relatively straightforward justification of freedom of the press to support the operation of democratic institutions, utilitarianism's praxis of freedom of the press manages to undermine any democratic aspirations because of its commitment to a particularly divisive form of social engineering and paternalist elitism. The praxis of freedom of the press for utilitarians is necessarily at odds with its initial aspirations.

CHAPTER FIVE

Liberalism: Free Speech, Liberty, Equality and the Middle- Class Ascendancy

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Summary

CHAPTER FIVE

Liberalism: Free Speech, Liberty, Equality and the Middle-Class Ascendancy

5.1: Introduction

In 1836 the reduction of the stamp tax from 4d to 1d signalled the end of restrictive press legislation. It seemed that the press was now set free, as the old restrictions on the powers of the press gradually came into conflict with the new and emergent political, economic and social changes taking place within society. Utilitarian arguments had increasingly gained general acceptance within the political landscape and the force of the free market started to erode restraints on the press.

Moreover, probably the most well known defence of freedom of speech emerged after the battle for freedom of the press was already more or less won. Such a defence emerged out of the development of utilitarianism, and mixed with liberal political thought. Indeed, so ingrained is the idea of freedom of speech within liberalism that in terms of the historical and philosophical development of freedom of speech, there can be little doubt that the development of liberalism and the variants of this political, economic and philosophical theory, provide the most well defined, if not most commonly articulated defences of free speech. To this day, the most common defence of freedom of speech in Western society has its roots in the philosophical development and articulation of freedom of speech which emerged from the liberal thought that came to prominence during the middle and latter stages of the nineteenth century.

Many of the issues that contributed to the debates around freedom of speech and freedom of the press in the earlier parts of the nineteenth century were no longer relevant from the middle of the century onwards; the repeal of the stamp tax and the widening of the franchise all meant that the landscape of political activism was rapidly changing. Moreover, with the advent of mass printing and the gradual

opening up of commercial markets, within a framework of free enterprise, the press was largely deemed to be free. As official censorship declined sharply with the increasing mass production of newspapers it became no longer expedient to pursue seditious literature, and on the whole prosecutions for sedition declined sharply.¹ So much so that many foreign radicals could only have their work widely distributed within Britain, as censorship of the press across Europe did not cease until the closing of the nineteenth century.²

As Donald Thomas notes: 'by the latter half of the nineteenth century, the dispute was no longer between those who regarded liberty of the press as the only safeguard against tyranny or corrupt government, it was a dispute between believers in an absolute or utopian freedom of expression and those who saw freedom of expression as a political compromise.'³ The focus of attention now was increasingly on the threat posed by unenlightened public opinion to individual liberty and freedom of expression. For radicals such as John Stuart Mill (1806-1873) in particular, this threat was perceived as acute.

The focus of this chapter then will be on the various liberal justifications for free speech as examined in key philosophical and political tracts and on these arguments' articulation in the practice of politics mainly represented in numerous liberal press organs during the nineteenth century. The chapter will be structured as follows: it will begin by providing a broad explication of liberalism; some of its key philosophical parameters as well as their historical development will be

¹ See Lucy Brown's *Victorian News and Newspapers* (Oxford: Clarendon Press, 1985). Brown charts the development of the commercial press in the nineteenth century with particular reference to how the newspaper was distributed, presented, received as well as the development of technology and its impact on the mass production of newspapers. She notes that 'during the second half of the nineteenth century, the newspaper became established as part of the normal furniture of the life for all classes.' p. 273.

² See R. J. Goldstein, *Political Censorship of the Arts and the Press in Nineteenth Century Europe* (Basingstoke: Macmillan, 1989).

³ D. Thomas, *A Long Time Burning: The History of Literary Censorship in England* (London: Routledge Kegan Paul, 1969), p. 214.

examined. From this I will move on to explore more closely liberalism's political philosophy of freedom of speech. In doing this, I will start by examining John Stuart Mill's earlier newspaper writings on freedom of the press and freedom of expression; this will be followed by a discussion of Mill's *On Liberty*, and in particular Chapter Two of this work. Following a discussion of Mill's ideas, the chapter then moves on to explore the implications of Mill's arguments in the light of his other works. By examining Mill's views on political economy and his discussions on equality, I suggest that Mill's desire for liberty, as expressed in *On Liberty*, may be somewhat undermined.

Moving away from Mill, the chapter will then explore ideas behind 'The Association for the Repeal of the Taxes on Knowledge' a key middle-class movement which had its roots in working-class agitation, but was taken over by liberal elites, and which sought a complete end to all press legislation. A discussion of the ideas of some of the Association's supporters including leading liberals, Richard Cobden and John Bright will follow. The chapter will conclude by suggesting that the liberal praxis of freedom of speech, which was manifested in arguments for a free press in newspapers, pamphlets and journals, only offers us a 'thin' justification and cannot be identified out of context of the broader ideological battle between an ascendant middle-class, the aristocracy and the working-classes. Indeed I suggest that the mainstream liberal argument singularly is subsumed into a broader battle for free trade and middle-class dominance.

5.2: One Liberalism or Many?

In providing an exploration and analysis of liberal arguments for freedom of speech and their praxis, I am at once confronted with a number of problems. As Williams and Pearson note: 'Unlike utilitarianism, liberalism during the nineteenth century owed its strength not so much to a unified commitment to a

single idea as to the blending of a number of traditions and a whole range of values.⁴ Also, Alan Sykes in his *The Rise and Fall of British Liberalism 1776-1988*, notes that defining liberalism presents us with great difficulties. Borrowing from Lloyd George, Sykes suggests that liberalism as a concept is 'like picking up mercury with a fork, not only does it divide easily; it tends to evaporate over time.'⁵ Thus as we will see in the next chapter on socialism and freedom of speech, we are confronted with some awkward definitional problems in attempting to explore the liberal praxis of free speech, as the very nature of liberal political theory has no fixed base and indeed, presents us with 'varieties of liberalism'. Moreover, the scope, breadth and depth of liberal thought is wide and far reaching, it influenced many political activists during the nineteenth century. This definitional difficulty may not, however, be as problematic as first suggested. At least in philosophical terms, as freedom of speech is, as noted, most commonly associated with the political philosophy of liberalism, at the very least we should be able to glean some core or fundamental values that have impacted on liberalism's praxis of freedom of speech.

Liberalism as a movement and as a political philosophy has its roots in the seventeenth and eighteenth centuries. As I have discussed in Chapter Two, struggles for freedom of speech (or more accurately struggles for the toleration of certain opinions) went hand in hand with struggles against tyranny and oppression from church and state. As Bramsted and Melhuish note 'liberalism emphasised the rights and the potential of the individual facing the forces of tradition and of the old Establishment.' 'The individual and his property were regarded as sacrosanct so long as they did not conflict with existing laws.'⁶ For those who provided a precursor to liberalism and those who developed liberalism within the

⁴ R. Pearson, & Williams G. L. *Political Thought and Public Policy in the Nineteenth Century* (London: Longman, 1982), p. 42.

⁵ A. Sykes, *The Rise and Fall of British Liberalism 1776-1988* (London: Longman, 1997), p. 1.

⁶ E. K. Bramsted, & K. J. Melhuish, *Western Liberalism* (New York: Longman, 1978), p. 3.

context of the nineteenth century, the individual was the focus point of all activity, social, political and economic. The individual is 'primary'. 'Freedom must be promoted, and social, economic and political arrangements must be judged in terms of their effect on the liberty of individuals.'⁷ In practice, this meant limited government intervention especially in economic affairs, the market should be left to itself. The only time that government should involve itself in the market is when there is a threat, either internal or external, to the free operation of market forces. In the social sphere in general, the government should not interfere with the activities of private individuals and the only reason government might have cause to enter into the affairs and dealings of private individuals, is when such affairs harm or threaten the liberty of others.

Arblaster notes that 'the metaphysical and ontological core of liberalism is individualism. It is from this premise that the familiar commitments to freedom, tolerance and individual rights are derived.'⁸ Such a conception of liberty recognises that the individual should be left free from constraints so as to allow the 'natural' characteristics of man to flourish. John Gray⁹ notes that there are three strands of justifications of liberalism, all of which in different ways underpin the belief that the individual is primary. The first strand is based on a doctrine of natural rights; those rights that are fundamentally ascribed to human beings and that 'are morally superior to any social institution or contractual arrangement'.¹⁰ The second strand, which draws on Kantian deontology, asserts that rational human beings, as agents, are ends in themselves as individual authors of their own values and it is down to them alone to determine their fate. Thirdly, there is the notion adopted by John Stuart Mill (and which has roots in

⁷ G. L. Williams, *Political Theory in Retrospect* (Aldershot: Edward Elgar, 1991), p. 147.

⁸ A. Arblaster, *The Rise and Decline of Western Liberalism* (Oxford: Blackwell Publishers, 1984), p. 15.

⁹ J. Gray, *Liberalism* (Milton Keynes: Open University Press, 1986).

¹⁰ Gray, *Liberalism*, p. 46.

his utilitarian upbringing), that there is a necessary link between happiness and freedom¹¹. As such the natural consequences of a free life add to the maximisation of utility. As Gray asserts '[b]y enriching the classical utilitarian conception of happiness with Aristotelian and Humboldtian elements, Mill softened the tension between the moral individualism of the liberal outlook and the collectivist implications of the classical utilitarian goal of general welfare.'¹² For Mill in this sense, individuality is necessary for human well being. Some of these issues will be explored in greater depth in the course of this chapter. However, having provided a brief taste of liberal political philosophy, the best course of action now is to move on to a more specific discussion of the liberal philosophy of freedom of speech, and where better to start than John Stuart Mill's political philosophy of free speech.

5.3: Preludes to *On Liberty*

In focusing on J. S. Mill's arguments for freedom of speech it will be helpful to look at aspects of his work that were developed prior to the publication of *On Liberty* in 1859. Thus, I feel that it is useful to draw on some of Mill's work that can be seen as preludes or prefaces¹³ to *On Liberty*. Long before the publication of *On Liberty*, John Stuart Mill had been vigorously engaged in writing for newspapers and journals on topics as wide ranging as religious persecution, freedom of expression, the principle of utility and the value of education. Following the footsteps of his father, Mill the younger regularly wrote for the *Westminster Review* and the *Morning Chronicle* from 1822. This section will examine some of his earlier work as represented in these radical vehicles.

¹¹ Mill moved away from the narrow Benthamite view of happiness and embraced happiness as a combination of higher and lower pleasures.

¹² Gray, *Liberalism*, p. 53.

¹³ I have borrowed this phrase from the title of a collection of Mill's early newspaper writings edited by Bernard Wishy entitled *Prefaces to Liberty, Selected Writings of John Stuart Mill* (Boston: Beacon Hill, Beacon Press, 1959).

It should be noted that the flavour of Mill's writing in his formative intellectual years was overwhelmingly utilitarian, and as such, the temptation to include the early writings of the younger Mill in the previous chapter was strong. However, I feel that it is necessary to include at least a flavour of Mill's early utilitarian writings in this part of the thesis, primarily because it is Mill's link with utilitarianism that many critics argue undermine Mill's views in *On Liberty*. Also, I have included examples of his early work to capture a sense of movement in Mill's thought from his raw utilitarianism of the 1820s and 1830s to a more complex utilitarianism that is evident in Mill's later works.

Mill's newspaper writings spanned more than fifty years, from his early radical pronouncements and critiques in the *Traveller*, when he was just sixteen years old, to his last newspaper article published (after his death) in the *Examiner* in July, 1873. His words appeared in over twenty seven newspapers in which Mill wrote widely on politics, economics, law and philosophy, contributing 'practical and theoretical advice'.¹⁴ Mill also wrote regularly on French politics in the 1830s, in the *Examiner*, and on the condition of Ireland in the *Morning Chronicle* during the mid 1840s. Focussing on these newspaper writings will highlight the importance that Mill placed on a free press as we see examples of his arguments in practice.

Although as Robson points out, the newspaper was not Mill's main medium, he knew all too well the value of newspapers as their impact was immediate and widespread.¹⁵ Very early on in Mill's writing career he took an interest in press legislation and advanced the notion that prosecutions against the press were indefensible. In 1823 Mill wrote three letters to the *Morning Chronicle* concerning the toleration of free discussion in response to Richard Carlile's

¹⁴ A. P. Robson, editors introduction in John Stuart Mill, *Collected Works*, Vol. XXII (London: University of Toronto Press, Routledge & Kegan Paul, 1986), p. xix.

¹⁵ Robson, *Collected Works*, Vol. XXII, p. xix.

prosecution for blasphemous libel. The letters, signed Wickliff, were Mill's first public attack on press prosecutions and in these letters it is clear that Mill has been heavily influenced by his utilitarian upbringing, as many of the themes already noted in the utilitarian justifications for freedom of the press resonate here. Most strikingly, Mill highlights the familiar notion that the 'exclusion of discussion' has consequences which hinder utility, as the search for truth would be obscured:

I shall first observe, that as it is generally allowed that free discussion contributes to the propagation of truth, and as this assertion is never controverted on the great majority of subjects, it is incumbent on those who declare against toleration to point out some reason which prevents the general rule from being applicable to this particular case; to shew that free discussion, which on almost every other subject is confessedly advantageous to truth, in this particular case unfortunately contributes to the progress of error.¹⁶

Thus (unsurprisingly) we can observe the strong utilitarian disposition within the above quote; Mill is very aware that the search for truth is necessary for the maximisation of utility and this series of letters is well in keeping with the utilitarian stance against press prosecutions of the day, even though as Wishy notes, 'the Benthamites had no great taste for Carlile personally [...] they did care about freedom of the press'¹⁷. Just from these early examples, we can see that Mill's commitment to the search for the truth is clear. Moreover, there is evidence here that the origins of one of the arguments later to be developed in *On Liberty*¹⁸, is being formulated and worked through i.e. the notion that freedom of discussion promotes truth.

¹⁶ J. S. Mill, 'Morning Chronicle', 28th Jan. 1823. In John Stuart Mill, *Collected Works, Newspaper Writings*, Vols. XXII-XXV, edited by A. P. Robson and J. M. Robson (London: University of Toronto Press, Routledge & Kegan Paul, 1986), Vol. XXII, p. 10.

¹⁷ Wishy, *Prefaces to Liberty*, p. 39.

¹⁸ And to be explored in greater depth later in this chapter.

Another example of the younger Mill's early activity which hints at arguments later to surface in *On Liberty* concerns a review of an 'anonymous' pamphlet¹⁹ which attacked the corrupt and irrational Libel Laws, a pamphlet entitled the *Constitutional Association. Practice of the Courts. – Trial by Jury in Libel Cases* (1824). In his review, Mill extols the virtues of the pamphlet and suggests that it 'should be read by everyone who desires to know the extent of the boasted liberty of the press, which we are taught to believe, is the birthright of Englishmen.'²⁰ Also within the article, Mill highlights the role of the Judge, Jury selector and Jury in deciding the outcome of a libel case, arguing that because the Jury are not experts in the law they are often directed in their deliberations by the Judge. The result for Mill is that the Libel Laws are in effect made by the Judge. More importantly, however, Mill suggests a conflict of interest, as normally the Jury could if it wished ignore the Judges direction and 'set aside' his opinion. However, he points out that in Libel cases this rarely happens as the courts nearly always employ a 'packed Special Jury' and as such are necessarily selected from a 'small number of persons' who are already known to the Jury selector. Mill highlights the relationship between the Jury selector and the Judge arguing that juries are selected for their compliance to the directions of the Judge:

We assert, that, if a public officer is placed in a situation where his employers will expect him to serve them at the expense of the public – where he must content them or forfeit his subsistence, evil cannot fail to ensue.²¹

Mill does not blame specific individuals for this conflict of interests, it is the system of Law itself that is inefficient and so individual interests are served rather than the public interest by Jury packing in Libel cases. What Mill is attempting to

¹⁹ The pamphlet was written by Francis Place and Mill would have been well aware of the authorship of the pamphlet

²⁰ J. S. Mill, 'Place's On the Law of Libel', *Morning Chronicle*, Jan. 1st, 1824. See, *Collected Works*, Vol. XXII, p. 91.

²¹ Mill, 'Place's On the Law of Libel', *Collected Works*, Vol. XXII, p. 93.

show here is that the public interest is neglected for particular gain. Again, we see a utilitarian analysis which cites the narrow interests of the few being served by the process of Law which, because of the make up of such as system, necessarily leads, in Mill's own words, to 'evil'. For Mill here, the interests of the many are sacrificed for the interests of the few.

As noted, Mill was also engaged in writing on the affairs of France and on occasion wrote about French press legislation. In an article entitled 'The French Law Against the Press', Mill criticises a recent restrictive press decree passed in France. Mill notes that the decree is 'one of the most monstrous outrages on the idea of freedom of discussion ever committed by the legislature of a country pretending to be free.'²² Moreover, Mill highlights the hypocrisy of political parties which, whilst not in power advocate freedom of the press, but as soon as they attain power, reject it – '[h]ow long shall we continue to see the freedom of opinion, which all parties profess while they are on the oppressed side, thrown off by them as soon as they are in the majority?'²³ Interestingly the article not only criticises (as one would expect) government restrictions on the press and political hypocrisy, but seemingly against all other previous inclinations, almost provides what can be described as a justification of violent insurrection; or at least an excuse for those who might wish to rise up and violently challenge government. He argues:

A government cannot be blamed for defending itself against insurrection. But it deserves the severest blame if to prevent insurrection it prevents the promulgation of opinion. If it does so, it actually justifies insurrection in those to whom it denies the use of peaceful means to make their opinions prevail. [...] Who can blame persons who are deeply convinced of the truth and importance of their opinions, for asserting them by force, when that is the only

²² J. S. Mill, 'The French Law Against the Press', In *Spectator*, August 19th, 1848, p. 800., *Collected Works*, Vol. XXV, p. 1116.

²³ Mill, 'The French Law Against the Press', *Collected Works*, Vol. XXV, p. 1117.

means left them of obtaining even a hearing? When their mouths are gagged, can they be reproached for using their arms?²⁴

Mill seems then to be arguing that if a government inhibits 'the promulgation of opinion' and in doing so, by definition, thus prevents any 'peaceful means' open to the public to convey their opinions, then the public is perfectly entitled to engage in physical force to make their point. However, the statement runs contrary to his later pronouncements in *On Liberty*, as Mill famously states, 'the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their member is self protection.'²⁵ Thus we have a contradiction. On the one hand Mill is arguing that violent insurrection is defensible if the government withholds the right to freedom of expression, and on the other hand, Mill notes that the only reason that violence can be used is for self protection. Mill continues:

[...] by what right can the Assembly now reprobate any future attempt, either by Monarchists or Socialists, to rise in arms against the Government? It denies them free discussion. It says they shall not be suffered to bearing their opinions to the touchstone of the public reason and conscience.²⁶

Such a statement could not be put down to the immature writings of a young man, as Mill was forty two when he wrote this. However, Mill could be excused a certain amount of leeway here, as the article on the French press restrictions was written eleven years before *On Liberty*. Moreover, a moral justification of violence could well fit into utilitarian philosophy, as the emphasis is on maximisation of utility of the majority, and as such overrides particularist interests of the minority. However, as Williams notes, Mill sympathised 'to a greater or lesser extent' with 'revolutions' and 'revolts' across the globe,

²⁴ Mill, 'The French Law Against the Press', *Collected Works*, Vol. XXV, p. 1118.

²⁵ J. S. Mill, 'On Liberty', *Collected Works*, Vol. XVIII, p. 223.

²⁶ Mill, 'The French Law Against the Press', *Collected Works*, Vol. XXV, p. 118.

particularly during the 1830s and 1840s.²⁷ Indeed he notes that Mill in his day was not seen as the ‘old fashioned moderate’, or the traditional liberal, as he is often credited today. For Williams (echoing Rees’s reflections on Mill²⁸), argues that Mill was perceived by his contemporaries largely as a dangerous radical who rejected much of the English Victorian mentality, inspired instead by French and German radical thought. Mill’s perspective is to be seen as typically un-English, with his rejection of custom and tradition, and his embrace of radical change. Seen in this broader contextual light, Mill’s defence of violent insurrection can be viewed not so much as a contradiction; rather, it could be viewed as a component of praxis that emerges in the work of a progressive – albeit to some dangerous – radical.

In a similar vein to his utilitarian forebears, Mill cites the stamp taxes as a key vehicle by which the government impeded the spread of useful knowledge. Mill even criticised the role of the Post Office for its part in enforcing the taxes on knowledge. In an article entitled ‘Conduct of the Ministry with Respect to the Post-Office Department, and the Payment of Officers by Fees’, Mill attacks the levy on newspapers gained by the clerks of the Post Office from the franking of newspapers. Mill, in more typically liberal vein, then goes on to describe the practice and links it to the evils of monopolisation, and monopolisation of newspapers in particular. Mill argues that such taxation is for the benefit of preserving a monopoly of the press and runs contrary to widespread interests which are best served by the market:

It is this, the anti-popular instinct together, which makes them uphold the taxes on newspapers and political publications. Who are their advisers in this? The daily newspapers! Monopolists, the market which they now engross exclusively. Ministers little know

²⁷ G. L. Williams, ‘J. S. Mill: Then and Now’. *Politics*, Vol. 15, No. 3, (1985), pp. 183-189, p. 184.

²⁸ See Rees, *John Stuart Mill’s On Liberty*, (Oxford: Clarendon Press, 1985), especially Chapter III.

the store of public hatred which they are laying up for themselves by this, and their defence of the corn laws, and one or two things more, which the mass of the working people feel to their heart's core, and which a Ministry, unexceptional in every other respect, could not possibly persevere in for three or four years without becoming as odious as the Castlereagh Ministry in its worst times.²⁹

Mill here in the 1830s is presenting a slightly different argument, and one that is later taken up in the 1850s by Richard Cobden, which intimates at government complicity with the established newspaper press in maintaining a monopoly of the newspaper market in return for generous reporting. The market itself would allow for the circulation of ideas, free from government intervention and interest which is symptomatic of corruption and greed. Thus rather than an assertion of truth, we have an attack on monopolies and on government taxation. An argument that hints at the assertion of individual liberty above all else.

Another theme which emerges early in Mill's writings on the press, and one taken up at greater length in *On Liberty* (but as we will see, much more critically), is a consideration of the role and value of public opinion. Moreover, it is the value of public opinion which Mill sees as indispensable to the struggle for freedom of the press:

He will learn from this pamphlet, that the rulers of this country possess as great a power of suppressing obnoxious publications by fine and imprisonment as they can desire: that the comparative free discussion which we enjoy exists only by convenience, and would not exist at all, were it not forced upon the government by an enlightened public opinion.³⁰

Ten years later, Mill again intimates the potential role of public opinion in advancing freedom of discussion in France, inferring that public opinion needs to

²⁹ J. S. Mill, 'Conduct of the Ministry with Respect to the Post-Office Department, and the Payment of Officers by Fees'. *Examiner*, Nov. 10th, 1833, 706-7. *Collected Works*, Vol. XXIII, p. 645.

³⁰ J. S. Mill, 'Place's On the Law of Libel', *Morning Chronicle*, January 1st, 1824, p. 2. *Collected Works*, Vol. XXII, p. 91.

be 'sufficiently advanced' before any progress can be made. Commenting on the progression of a law not dissimilar to the Six Acts, Mill notes that:

There is no doubt that it [the law] will pass; for public opinion is not yet sufficiently advanced among the French, to maintain any struggle on behalf of freedom of discussion for its own sake, when they take no personal or party interest in those who are victims of its infringement.³¹

Clearly such endorsements of the potential of public opinion may be perceived as running contrary to Mill's later concerns of public opinion stifling individuality and diversity as noted in *On Liberty*. However, in both of the examples cited above, Mill is clear that it is an *enlightened* or an *advanced* public opinion that is necessary to offset corruption and create an open society. It is the raised consciousness of the public that will ensure advancement in society within the context of Mill's ideal political community and not the public opinion of contemporary France, (and Victorian England) with its narrow interests and low horizons.

In order to raise these horizons, Mill was sure that education was the key. In another passage on the importance of education we can see more clearly a crucial feature of utilitarian philosophy that Mill embraced, one that echoes quite resonantly some of the key sentiments of the previous chapter and one that stayed with Mill throughout his life. Specifically, we might expect justifications for education that enhance the search for truth and the discovery of that which might enhance knowledge and inhibit ignorance. A free press, of course, was essential to this:

Another question, which it does not suit those who make the ignorance of the people a plea for enslaving them to put it, is, why are they ignorant? because to this question there can be only one

³¹ J. S. Mill, 'French News', *Examiner*, February 9th, 1834, pp. 88-9. *Collected Works*. Vol. XXIII, p. 683.

answer, namely, that if they are ignorant, it is precisely because that discussion, which alone can remove ignorance, has been withheld from them. And although their masters may find it convenient to speak of their ignorance as incurable, we take the liberty of demurring to this conclusion, until the proper remedy shall have been tried. This remedy is, instruction: and of instruction, discussion is the most potent instrument. Discussion, therefore, has a necessary tendency to remedy its own evils.³²

Thus we see above examples, some raw and immature, of Mill's early considerations on liberty of the press. Evident are strong utilitarian overtones that stress accountability and openness, but also an assertion of the value of truth as a public good. Moreover, in the earlier writings, we see Mill starting to generate a sense of the value of individual liberty and the virtues of unfettered expression. These themes and others are more fully explored below in my discussion of *On Liberty*.

5.4: The 'Classic Defence': *On Liberty*³³

We can see then, that in the early passages examined above, Mill has many sympathies with the utilitarian analysis, although in some of the passages noted, it is evident that Mill is starting to shift in his analysis towards a mode of thinking that surfaces more starkly in *On Liberty*, and later still in *Utilitarianism* (1861).³⁴ Mill was charged (and still is to this day) with not dealing with some of those 'shaky foundations', as the tensions between a rights based theory present in *On*

³² J. S. Mill, 'An article on The Law of Libel' and 'On the Law of Libel; with Strictures on the self-styled Constitutional Association', *Westminster Review*, April, 1825; *Collected Works*, Vol. XXI, p. 11.

³³ The title of 'classic defence' of free speech has been given to Mill's argument in *On Liberty* by Alan Haworth in his book *Free Speech* (London: Routledge, 1998). I will return to some of Haworth's remarks on *On Liberty* later in this section.

³⁴ I am not asserting here the 'two Mill's' thesis, (see below) only that Mill's utilitarianism developed a more complex, more empathetic and less prescriptive tone in later works.

Liberty and the consequentialism of utilitarianism as a moral theory are seen by some as irreconcilable.³⁵

What has come to be known as the classic liberal position on freedom of speech was developed by John Stuart Mill in his book *On Liberty* (1859). There have of course been many commentaries, critiques and re-evaluations of this classic text and it is not my intention here to add to them in any great detail.³⁶ However, given that the period under investigation provided Mill's often abstract arguments with some real substance, I will, for the purposes of clarity, provide a brief outline of the main arguments that are developed by Mill in this work, and some of the criticisms that have been made against his arguments during his time and more recently.

On Liberty was written in a context of great social and political change. Powers of the press were emerging as a result of the repeal of the stamp tax, and new franchise arrangements of 1832 meant that the political landscape and the structures on which this landscape was built were starting to change. With this change came a shift, albeit a minor one, in the power base of society. The rule of law was no longer the result of a closed Parliament, but was now to be defined as a result of an albeit limited, participatory democracy. For some, and for Mill in particular, this new democracy should not be embraced without some notes of caution. Most notably, as official censorship declined, the potential of another form of censorship, this time emerging from public opinion, grew stronger; a note

³⁵ For a discussion of this area of Mill studies see J. F. Stephen, *Liberty Equality and Fraternity* (Cambridge: Cambridge University Press, 1967 [1873]); G. Himmelfarb, *On Liberty and Liberalism* (New York: Alfred A. Knopf, 1974); J. Gray, *Mill On Liberty: A Defence* (London: Routledge and Kegan Paul, 1983); G. L. Williams, 'J. S. Mill on the Greeks', *Polis*, Vol. 4, No. 2 (1982) pp. 1-17; J. C. Rees, *John Stuart Mill's On Liberty* (Oxford: Clarendon Press, 1985), and G. L. Williams, 'The Greek Origins of J. S. Mill's Happiness' *Utilitas*, Vol. 8, No. 1 (1996), pp. 5-14.

³⁶ Since the publication of *On Liberty* in 1859 there have been many re-evaluations, critiques and commentaries to *On Liberty*; some of which have been included in this brief survey, others, for reasons of space and appropriateness have not.

of caution was needed against such a threat. Such a note came from *On Liberty*. A.W. Levi³⁷ notes that the intention of *On Liberty* is to 'examine the nature and limits of the power which society can legitimately exercise over the individual....'³⁸ Mill not only asserted freedom from governmental interference but also from 'social' tyranny in the form of the weight of public opinion which was now more likely, due to the new representative system of government. From this premise, Mill asserts a commitment to liberty of thought and discussion which emanates from an obligation to individuality and its concomitant commitment to human flourishing. In *On Liberty*, Mill's defence of freedom of speech, or more accurately freedom of thought and discussion,³⁹ takes the form of a number of interrelated arguments and it is worth drawing attention to these here. At the end of Chapter Two of *On Liberty* Mill summarises them so:

Firstly, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility. Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied. Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in a manner of a prejudice, with little comprehension of feeling of its rational grounds. And not only this, but fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but

³⁷ In 'The Value of Freedom: Mill's Liberty (1859-1959)' in P. Radcliffe, *Limits of Liberty, Studies of Mill's On Liberty*. (Belmont: California, Wadsworth Publishing Co., 1966).

³⁸ Levi, 'The Value of Freedom', p. 7.

³⁹ In *Free Speech* Alan Haworth asserts that freedom of speech is in short, an 'umbrella term' for a number of distinct freedoms. Freedom of thought and discussion are but one, freedom of the press another; as is freedom to participate in political meetings and rallies. I feel that this umbrella term is sufficient and do not intend to engage in semantics on this topic; needless to say in my introductory notes I provided a defence of my use of terminology and see no reason to dissent from this.

cumbering the ground, and preventing the growth of any real heartfelt conviction, from reason or personal experience.⁴⁰

The first overriding premise - and one which is grounded in his early socialisation to the principles of Positivist rationalism - is that the search for truth should not be impeded as this can only harm the progress of mankind. Moreover, to silence any opinion is to assume that the silenced opinion is wrong, thus assuming infallibility. Mill notes:

[...] The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility.⁴¹

Mill thus posits that any person's opinions, unless they are open to refutation, necessarily claim an assertion of certainty in all cases and at all times. For Mill, this runs contrary to his Positivist training which emphasised the testing and re-testing of hypotheses and assumptions. As we can see, Mill is not reticent about his belief in such a process:

As mankind improve, the number of doctrines which are not longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be measured by the number and gravity of truths which have reached the point of being uncontested.⁴²

Mill then moves on to note that even if the opinion that is silenced is false, to gag it is to deny that there may be some part of the opinion which is true or contains some truth. In gagging this we are jeopardising any future inquiry. Only if

⁴⁰ Mill, 'On Liberty', *Collected Works*, Vol., XVIII, p. 258.

⁴¹ Mill, 'On Liberty', *Collected Works*, Vol., XVIII, p. 229.

⁴² Mill, 'On Liberty', *Collected Works*, Vol., XVIII, p. 250.

untruths are allowed to be aired can we affirm any movement towards the truth, as it is untrue opinions' 'collision' with true opinions that make the move towards greater understanding possible. 'The discovery of truth is facilitated by the "collision"⁴³ of opinions which takes place when ideas are discussed.' As Mill famously states:

[...] the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.⁴⁴

Thus once an approximation of the truth is achieved, the continued testing of this assertion and the ongoing search for truth is still necessary in order to test and ensure the validity of the approximation; in a sense an almost organic 'living truth' is sought after, through ongoing assault from the opinion's dissenters.

This dynamic sense of progressive truth is emphasised when Mill brings in the constraining notion of prejudice and how prejudice can impact negatively on the vitality of truth. Mill here asserts that even if we are sure that a truth is just that, and uncontrovertibly so, unless we contest it with regularity, people will lose the essence of the truth, and it will become an unsubstantiated prejudice:

[...] when the mind is no longer compelled, in the same degree as at first, to exercise its vital powers on the questions which its belief presents to it, there is a progressive tendency to forget all of the belief except the formularies, or to give it a dull torpid assent, as if accepting it on trust dispensed with the necessity of realising it in consciousness, or testing it by personal experience; until it almost

⁴³ A. Haworth, *Free Speech* (London: Routledge, 1998), p. 4.

⁴⁴ Mill, 'On Liberty', *Collected Works*, Vol., XVIII, p. 229.

ceases to connect itself at all with the inner life of the human being.⁴⁵

From this position we can see that Mill views prejudice as a potential threat to the search for truth in that the vitality of a true opinion is lost as it ceases to be engaged by mental industry. The final primary point that Mill makes in Chapter Two follows on from the last, and relates to the status of an untested opinion, in that if it is not rigorously contested it will be received with some suspicion by rational agents, and worse, it will become nothing more than a dead dogma.

In sum, what Mill has in mind here is that constraints which hinder the ongoing movement of knowledge should be removed so as to ensure that the free circulation of thought and discussion allows a movement towards an approximation of the truth which can only benefit mankind. Such restraints might be institutional, as in restrictions on the press; but Mill is more concerned with those constraints which stem from the tide of public opinion and which might quash individuality and the development of the full capacities of individuals as diverse beings. What Mill is concerned with here is that diversity should be encouraged through the lack of formal *and* informal social constraints. If only limited constraints remained - those which protected individual liberty - then not only would an approximation or movement towards truth be possible, but mankind would flourish as each individual would live to their full potential, unhindered by government or unenlightened public opinion.

Clearly, this view emanates from a Positivist/Enlightenment view that the search for the truth is necessary for human fulfilment, furthermore, the truth or some approximation of it is attainable by unconstrained human intellect and mental industry. It should be clear from the discussion above that one of the key

⁴⁵ Mill, 'On Liberty', *Collected Works*, Vol., XVIII, p. 248.

components of Mill's argument is the idea that freedom of speech is prioritised over other sorts of activity because of its propensity to activate a movement towards the truth, or at least an apprehension of the truth.

At this point, I refer again to the points made in Chapter One in my discussion of the typologies of free speech arguments. In Mill, we can see here an assertion of a version of the truth argument in that the open discussion of ideas leads to closer approximation to or 'livelier impression' of the truth. However, placing truth above all other social values as Mill seems to do has been questioned, for example by Frederick Schauer.⁴⁶ Schauer argues that a search for some approximation of the truth is not necessarily superior to any other social interest;⁴⁷ even if we are confronted with the truth and falsehood side by side, it does not necessarily follow that falsehood would be rejected. In other words why should the notion of objective 'truth' be placed upon such a high mantle, as many people would fiercely reject what positivists would term 'objective facts' in favour of particular belief systems or cultural norms? Moreover, is it good theoretical practice to assume that rationality should always triumph over irrationality? Phenomenologists would say not. However, again we must contextualise Mill and reassert the relevance of his Positivist/Enlightenment upbringing. Even if Mill did not believe in absolute truths in the Platonic sense, he did regard truth as a higher social value. As we saw with the Philosophic Radicals in the previous Chapter, the value of truth both in terms of its social significance and as a means to achieving greater understanding is overwhelming. For Mill, as the Utilitarians before him, the truth would provide the answer to questions pertaining to the problems of society. What Mill believed was that if people had unfettered access to all opinions, and if people were allowed to rehearse and debate such opinions,

⁴⁶ F. Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge: Cambridge University Press, 1982).

⁴⁷ Schauer, *Free Speech*, p. 23.

rational outcomes would follow; rational outcomes which would benefit all society.

In terms of political praxis then, how should we interpret Mill's arguments? The press, if left unfettered, would contribute to the increasing rationality of the people, and as the people became more rational, they would be able to reach a rational consensus about the organisation of politics and society. In doing so they would be in a position to dispel the ignorance and prejudice that governments had hitherto depended on to maintain their power base. Thus as we saw in Chapter Four, the increase in the sum of rationality would benefit society as a whole. Again, we can see elements of this argument in Paine's *Rights of Man*, but Mill's argument has more of an applicatory sophistication than that of Paine, in that Mill is asserting the value of a particular type of activity which in his mind promotes an increased sum of rationality in the people which implicitly aids the search for truth. Such activity is apparent in Chapter Two of *On Liberty*. 'The argument from truth is very much a child of the Enlightenment, and of the optimistic view of the rationality and perfectibility of humanity it embodied.'⁴⁸

However, a key question for Mill, particularly in relation to arguments for freedom of the press is: is it the same (as it has to be for Mill) to say that the activities of freedom of discussion and opinion amount to the same sort of activities as a free press? Mill would have us believe that indeed they do; freedom of the press and freedom of thought and discussion are for Mill the same sort of activities that provide a movement towards the truth. However, Haworth argues that this particular feature of Mill's argument is difficult to sustain in general as it is based on what he terms the 'seminar model' of speech in which 'the chances of finding the truth are enhanced when it is possible to constantly pit ideas, one against the other in an arena of debate',⁴⁹ an arena not dissimilar from a seminar

⁴⁸ Schauer, *Free Speech*, p. 26.

⁴⁹ Haworth, *Free Speech*, p. 27.

situation. He notes that this quite particularistic arena for discussion falls outside the bounds of a large number of instances of speech activity and can only really apply within a particular conception of speech activity; i.e. not unlike those of a seminar. Thus in terms of Haworth's analysis, he is not wrong to suggest that the seminar model is indeed particularistic and confined to a quite distinct set of activities.

However, what Haworth fails to acknowledge sufficiently enough, is the context from which the so-called seminar model stems: that being the arena of the free press.⁵⁰ The press in Mill's day provides a living example of what Haworth terms the seminar model, as ideas and arguments were pitted against each other in the pages of many radical newspapers and pamphlets. As we have seen, Mill himself vigorously contributed to the press and it is no accident that this was the case as he saw the arena of the press as, to adapt Haworth's phrase - a mass seminar, in which ideas and thoughts could be expressed openly and contested within the context of the free exchange of ideas.

Another way of conceptualising Mill's principle, which again is linked to the free exchange of ideas, is the free market place of ideas metaphor.⁵¹ Such a metaphor asserts that as in the free market in which there is a free exchange of goods and services, and from this free exchange the best product or service emerges as a result of market demand; accordingly in the free exchange of ideas and opinions, the truth emerges in a similar way. However, Gordon⁵² notes that the marketplace metaphor does not accurately represent Mill's views on freedom of speech in *On Liberty*; indeed she points out that Mill never actually used the term; noting that

⁵⁰ Haworth does make a passing reference to journalistic activity, but not sufficient to sway him from his premise.

⁵¹ See Schauer, *Free Speech*, pp. 15-17; also, R. P. Wolf, *The Poverty of Liberalism* (Boston: Beacon Press, 1968).

⁵² In J. Gordon, 'Mill and the "Marketplace of Ideas"'. *Social Theory and Practice*, Vol. 23, No. 2 Summer, (1997) pp. 235-249.

when Mill talks of ensuring that all opinions are not to be stifled by public opinion, he is 'going beyond any mere passive tolerance of ideas contrary to received opinion.'⁵³ She argues that rather than a mere allowance of opinion, there is an *active* encouragement by Mill for minority opinions to be aired.⁵⁴ Moreover, Mill puts the 'highest value on the speech of those who are the least numerous and/or who have the least power in society at any given time.'⁵⁵ This, she argues, does not fit into the market metaphor and even though she does not argue that a 'market mechanism' would not suppress opinion and actively allow the free expression of ideas, this model of free speech, even if it did allow all viewpoints and opinions to be heard, is not representative of Mill's position. She argues that because Mill's position goes further than merely allowing the free expression of all ideas: 'we are compelled to give special consideration to certain of those ideas that are voiced by the minority.'⁵⁶

Gordon correctly asserts that Mill does not develop *On Liberty* to answer key questions such as: what does it mean in practical terms to countenance and encourage minority opinions? Through what mechanism ought we bring it about that the minority opinion is countenanced and encouraged? And should such a mechanism be governmental? She rightly has reservations about the 'marketplace' metaphor. However, it is my contention that she overplays the extent to which the language of the market has been 'corrupted' by our contemporary understanding of the market, although (and as she notes) Mill would reject many of the consequences of our free market system, it is not the contemporary market system, that Mill's marketplace of ideas is associated with; it is the nineteenth century emerging free market, which was based on the ideas that Mill supported actively throughout his life. Moreover, the free market in

⁵³ Gordon, 'Mill and the "Marketplace of Ideas"', p. 239.

⁵⁴ Again, the issue of the value of diversity emerges.

⁵⁵ Gordon, 'Mill and the "Marketplace of Ideas"', p. 240.

⁵⁶ Gordon, 'Mill and the "Marketplace of Ideas"', p. 240.

terms of the battle of ideas within the free press is something that Mill actively engaged in and encouraged. Of course Mill was sure to support and ensure that all ideas, even those of minorities, be heard, just as within a free market, there is active encouragement of innovation in the development of 'products', 'goods' and 'services'. All products and services are developed initially in a small number at their inception, only after their launch into the market place are they judged and succeed or fail on their merit, as is the same with ideas and opinions. I am not arguing that Gordon is wrong to highlight inadequacies in this metaphor, but fundamentally, Gordon attempts to make Mill less of an apologist for the free market than he ultimately is. The market place of ideas metaphor may be inappropriate but it is not inconsistent with Mill's belief in the value of the free exchange of goods and services. In again referring to the typologies outlined in Chapter One, we see that Mill's main argument is one that asserts truth, and the ongoing search for truth as primary. However, it should be also evident from the discussion above that in order to attain truth, complete liberty is necessary. Mill's stress on the value of individual liberty is of course fundamental to his arguments in *On Liberty*. Without freedom, the search for truth would be impossible. Thus in addition to the truth argument, we also have in equal measure the liberty argument, and it is this I will turn to in the next section.

Having outlined some of the main elements of Mill's arguments as found in Chapter Two of *On Liberty*, and placed them within the context of the truth argument, it is now necessary for me to look at how Mill's arguments stand up within the broader context of his work. I suggest that though Mill's arguments do offer a compelling justification for liberty of thought and action, and of course speech, it is within the context of the praxis of such arguments and within the framework of Mill's other works that Mill's arguments for freedom of speech are undermined. Indeed, I argue that the operational validity, i.e. the actual playing out of Mill's arguments is jeopardised by his more powerful commitment to political and economic liberalism, a commitment that has serious implications for any philosophical justification of freedom of speech. In order to justify this

assertion, it is necessary for me to look a little more closely on Mill's views on equality.

5.5: Mill, Liberty and Equality

It is my argument that the notion of equality is an important component within an exploration of the praxis of freedom of speech. As we have seen in Chapter Four, the utilitarian assertion of a free press was primarily intended to galvanise the middle-class ascendancy and socialise the working-classes into the acceptance of the inequality brought about by market forces. Thus the utilitarian praxis of freedom of speech is itself particularistic to specific interests and therefore cannot stand up in practice as an unproblematic justification for freedom of speech. For utilitarians, the praxis of their arguments for freedom of speech undermines any truly democratic aspirations that Bentham might originally have had.

For Mill too, it is necessary to examine the implications of his work, not only within the social and political context of his day, but also within the context of his other works. For example, how do Mill's arguments in *On Liberty* sit with the social and political system of his time, and more importantly, how do Mill's other political beliefs rest with his arguments in *On Liberty*? In this section I intend to highlight some of the difficulties Mill had with the concept of equality, mainly reflected initially in his distrust of certain aspects of socialist thought. Greater tensions emerge when one attempts to reconcile the notion of liberty, particularly in relation to the socio-economic system which Mill defended, with some of the egalitarian sentiments which emerged later in Mill's life. Indeed I highlight the inherent assertion of inequality as a crucial component of Mill's political philosophy, and which ultimately creates tensions with Mill's justification of freedom of speech and fundamentally its political praxis.

I suggest that Mill's view of non free-market or socialist systems is underpinned by his individualist view of liberty. Moreover, it is this narrow individualist view of liberty, that in part lies at the heart of Mill's support for the free market. I argue that this is where Mill's arguments for liberty founder, as it is the free market

economic system itself that undermines Mill's arguments for liberty and freedom. The problem is highlighted by this simple question to which I shall return: simply put, how can people be free to express themselves to their full potential, i.e. to be truly free, if they are not truly free because of the economic constraints placed on them that are the result of the free market?

Although historically Mill has been labelled a 'liberal', he often noted that socialism, if it were achieved by peaceful means, would be a desirable end and indeed its supporters 'may eventually establish their claims to preference over the existing order of things'.⁵⁷ However, in terms of Mill's justification of free speech, he is firmly posited as a liberal and not a socialist and it is necessary here to see why this was the case.

Mill, even before writing *On Liberty*, was aware of the potential dangers of collectivism. The following newspaper extract displays Mill's awareness of the pitfalls of socialist or communist systems.⁵⁸ Mill argues that within socialism there is 'a great weight of conformity', and it is lack of freedom *from* 'other peoples opinions' and 'bondage which I am afraid of in co-operative communities.' He continues:

I fear that the yoke of conformity would be made heavier instead of lighter; that people would be compelled to live as it pleased others, not as it pleased themselves; that their life would be placed under rules, the same for all, prescribed by the majority; and that there would be no escape, no independence of action left to any one, since all must be members of one or another community. It is this which, as is contended in *Political Economy*, would make life monotonous; not freedom from want, which is a good in every sense of the word, and which might be ensured to all those who are born, without

⁵⁷ J. S. Mill, 'Chapters on Socialism', in *Collected Works* Vol. V (London: University of Toronto Press, 1967 [1879]), p. 748.

⁵⁸ In this article, Mill criticises George Jacob Holyoake's attack on Mill's *Principles of Political Economy*, in which, Holyoake charges Mill with propagating 'sharp pangs of hunger' in the poor.

obliging them to merge their separate as well as their working existence in a community. No order of society can be in my estimation desirable unless grounded on a maxim, that no man or woman is accountable to others for any conduct by which others are not injured or damaged.⁵⁹

Thus we have Mill asserting that the focus of his *Political Economy* was a warning against conformity to a common system and not a justification of poverty and hunger.⁶⁰ Clearly Mill is concerned that 'socialistic' forms of organisation would stifle individuality liberty and diversity. However, Mill later acknowledged in his *Chapters on Socialism* that 'the various schemes for managing the productive resources of the country by public instead of private agency have a case for a trial...'⁶¹ Mill was clear though that revolutionary socialism 'would have no effect but disastrous failure'⁶² The best means of achieving such a state was by gradual means because reformist socialism:

has the great advantage that it can be brought into operation progressively, and can prove its capabilities by trial. It can be tried first on a select population and extended to others as their education and cultivation permit. It need not, and in the natural order of things would not, become an engine of subversion until it had shown itself capable of being also a means of reconstruction.⁶³

Mill was sympathetic to aspects of socialism, but he qualified this by noting that it was a system that could only be realised initially 'by the *élite* of mankind, and [they] have yet to prove their power of training mankind at large to the state of improvement which they propose.'⁶⁴ For Mill, examples of existing socialism were perceived as useful experiments in social organisation, in a similar vein with which Mill advocated all types of experimentation as positive aspects of diversity.

⁵⁹ J. S. Mill, 'Constraints of Communism', *Leader*, Aug. 3rd, 1850, p. 447, *Collected Works*, Vol. XXV, pp. 1179-80.

⁶⁰ Of course these concerns were to be raised again in *On Liberty*.

⁶¹ Mill, 'Chapters on Socialism', p. 748.

⁶² Mill, 'Chapters on Socialism', p. 749.

⁶³ Mill, 'Chapters on Socialism', p. 737.

⁶⁴ Mill, 'Chapters on Socialism', p. 748.

Thus socialist experiments should be encouraged, just like all types of experiments in living which have the desired effects on individuals. However, when describing the socialist critique of political economy, Mill notes that their analysis is produced by their 'ignorance of economic facts, and of the causes by which the economic phenomena of society as it is, are actually determined.'⁶⁵ Thus for Mill, socialistic economic analyses which form a key component of their overall critique are based upon incorrect assertions about the nature and process of capitalist economic theory and practice.

It seems then there are some tensions between Mill's concerns about the potential threat to individual liberty from 'socialistic' political arrangements, and an advocacy of socialism as a possible ideal social system. This point has been developed further by Raimond Ottow who argues that Mill 'bridges the camps of liberals and leftists'⁶⁶ and that elements of his political philosophy have appealing components to both left and right aspects of the political spectrum. Ottow notes that although in his *Autobiography* Mill calls himself a socialist, he was aware that he had to appeal to different elements of his contemporary audience. Ottow argues that Mill called himself a socialist because of so-called 'meta-reasons', writing 'with a double audience on view: on the one hand he demands that the leading strata of capitalist society see and react to the necessity for reform, and on the other hand, he demands that the leaders of the working-class movement moderate and tone down the expectations of a revolution soon to come.'⁶⁷ However, as we have seen, Mill was far more unsure of collectivism than Ottow implies and some further investigation is necessary.

⁶⁵ Mill, 'Chapters on Socialism', p. 727.

⁶⁶ R. Ottow, 'Why J.S. Mill Called Himself a Socialist', *History of European Ideas*. Vol. 17, No. 4 (1993), pp. 479-483, p. 479.

⁶⁷ Ottow, 'Why J.S. Mill Called Himself a Socialist', p. 480.

Amy Gutmann argues that the egalitarian tendencies within Mill's theories are strong, with an explicit commitment to participatory equality.⁶⁸ She goes on to link Mill's commitment to rationally motivated happiness with his assertion that if the appropriate form of education is provided to everyone, all will be able to experience the range of higher pleasures equally. In Mill's day however, and as she points out, 'not everyone is qualified to equally rank all the pleasures;'⁶⁹ but Gutmann asserts that if given equal 'social inheritance' and upbringing, the range of pleasures available, would be available to all mankind, as everyone would be able to pursue their own interests equally. Gutmann asserts that everyone will be equal in the sense that all have the range of capacities which will enable them to appreciate higher pleasures. What Gutmann is asserting then, is that Mill had an implicit egalitarian view of human nature which saw that everyone had equal potential capacities. It was only because of inequalities in education and socialisation that such differences in aspirations and abilities existed and if such inequalities were somehow removed, equality would prevail.

However, Gutmann fails to adequately acknowledge the tensions between Mill's commitment to a level of participatory democracy *and* the inequalities generated by the market system which he supported.⁷⁰ Although Mill did consider that an 'ideal' form of society might be attainable which looked to some degree like socialism, Mill's commitment to the market system as an expression of individual liberty, and the inequalities it generated is clear. To a large degree, Mill viewed some of the aspirations of socialism as being attainable *within* the liberal market system:

In truth, when competition is perfectly free on both sides, its tendency is not especially either to raise or to lower the price of

⁶⁸ A. Gutmann, *Liberal Equality* (London: Cambridge University Press, 1980), p. 48.

⁶⁹ Gutmann, *Liberal Equality*, p. 49.

⁷⁰ She concedes a time-bound advocacy of capitalist market economy, (p. 49) but this seems not to have any serious implications for her analysis.

articles, but to equalise it; to level inequalities of remuneration, and to reduce all to a general average, a result which, in so far as realised [...] is, on Socialistic principles, desirable.⁷¹

It seems then in principle that Mill viewed socialistic systems that generated equality as desirable in the far distant future. However, Mill was unshakeable in his belief that some of the benefits of socialism could be generated within the market system with relatively little effort. This belief highlights the tensions noted by Ottow above, but also demonstrates Mill's lack of insight into the divisive nature of the market system. It seems that the contradictions were not evident to Mill. Macpherson echoes this view when he contends that Mill did not see that the suffering of the working classes was a necessary consequence of the market system, but a monopoly of ownership by the ruling class. Moreover, he notes that Mill did not see that unfreedom was a necessary result of capitalist institutions at all.⁷² He argues that Mill 'found himself helpless, unable to reconcile his notion of values with the political economy [...] he still believed in.'⁷³ He notes that although Mill was:

outstanding as an economist, [he] did not grasp the essence of the capitalist market economy. It was his failure to do so that enabled him to reject the market morality. The founding father of liberal-democratic theory, we are compelled to say, was able to rise above the market morality only because he did not understand the market society.⁷⁴

Duncan is even more doubtful about Mill's aspirations when he asserts that Mill's commitment to higher and lower pleasures necessarily leads Mill to a form of 'democratic Platonism' in which all are equal but some are more equal than others. It is worth quoting him at length when he argues that Mill:

⁷¹ Mill, *Chapters on Socialism*, p. 251.

⁷² C. B. Macpherson, *Democratic Theory: Essays in Retrieval* (Oxford: Clarendon Press, 1973), p. 99.

⁷³ Macpherson, *Democratic Theory*, pp. 174-5.

⁷⁴ Macpherson, *Democratic Theory*, p. 175.

envisaged a fruitful and productive relationship, in conditions of intellectual freedom, between the morally and intellectually advanced members of the community, and the ordinary people. Everybody could not develop to the same degree, exercise the same powers and undertake the same responsibilities, but each should be encouraged and aided to develop to the pitch of which he was capable. Mill's doubts about the rectitude of and integrity of even wise leaders were combined with a desire to improve all men, and the result was an untidy and unsuccessful compromise which can best be labelled democratic – or even bourgeois democratic-Platonism. Mill did more than put a democratic façade over capitalistic inequality, but he cannot be characterised as unequivocally democratic even according to his own lights. He was a democrat of whom it could be said that he genuinely wanted democracy but failed to see the large social changes which would be needed if it was to become reality.⁷⁵

In my view, Duncan's points, if a little harsh, do raise some important issues in relation to the tensions within Mill's political ideal and his view of how these may be attained, and more importantly what sort of compromises may be needed by the market system, particularly in relation to the 'Platonist' tendencies which are evident at times in Mill's work. Indeed even during Mill's life similar tensions were highlighted by some of Mill's contemporaries, as Rees notes in his *John Stuart Mill's On Liberty*.⁷⁶ In this work we see that Rees provides some detail of the 'hostile criticism' that Mill received from his contemporaries, one of the main components of which was that he was charged with placing too great a weight on his conception of individualism, at the expense of a greater understanding of the 'social whole'. It is this notion of the social whole, and the impact of free market capitalism, and its link to individual freedom, on the social whole, that Mill seems to ignore in his work *On Liberty*.

⁷⁵ G. Duncan, *Marx and Mill, Two Views of Social Conflict and Social Harmony* (London: Cambridge University Press, 1973), p. 259.

⁷⁶ J. Rees, *John Stuart Mill's On Liberty* (Oxford: Clarendon Press, 1985).

What, however, does the above discussion of Mill's views on equality and socialism have to do with freedom of speech? The answer should be clear – in examining the praxis of Mill's arguments it has been necessary to briefly explore Mill's other thoughts on issues that impact on his arguments in *On Liberty*. We have seen that Mill's distrust of collectivism, because of its threat to individual liberty, and his commitment to free market capitalism raises serious problems for Mill and his arguments in *On Liberty*. In asserting the primacy of individual liberty above all else, he is jeopardising any actual commitment to real freedom of speech by undermining the notion of equality. It seems that Mill is blind to the problems of reconciling individual liberty with the consequences of the related market system. This problem then impacts on the praxis of his arguments for freedom of speech; I return to the question posed earlier: how can people be free to express themselves to their full potential, if they are not truly free because of the economic constraints placed on them that are the result of the free market? Unfortunately for Mill, he does not even recognise this question. As I suggest later in this work, a clear conception of equality has to be a necessary component of any meaningful argument for freedom of speech. If it can be shown that a strong operational commitment to equality *is* a necessary component of freedom of speech, and if Mill cannot meet the demands of a stark commitment to equality, as I have suggested, some doubt about Mill's arguments for freedom of speech are raised.

Finally, and to recap, referring again to the typologies of freedom of speech arguments, Mill's arguments for freedom of speech are derivative of two types of argument highlighted in Chapter One. Firstly it is evident in *On Liberty* that the search for truth is a key component of human flourishing. Secondly, and closely related to this, the exercise of individual liberty is posited as the best possible mechanism for the attainment of truth, hence, the liberty argument is employed. Thus the liberty argument and the truth argument are brought together. My comments on the praxis of these arguments as employed by Mill are intended to provide analytical scrutiny to the praxis of these arguments. Having raised some questions about the operational practicality of Mill's arguments in *On Liberty* it is

now necessary to shift my emphasis towards what could be termed more generally liberal justifications for free speech and their praxis. In doing this, I will turn to those themes that were centred around augmenting and cementing the middle-class ascendancy. One of the chief organs of this was 'The Association for the Repeal of the Taxes on Knowledge'.

5.6: The Middle-Class Ascendancy

Having discussed Mill's contribution to the philosophy and praxis of free speech, it is worth now considering other contributions from the liberal tradition during the nineteenth century. I assert in this and the following section that the mainstream middle-class liberal argument for freedom of speech has its roots primarily in the liberty argument which is essentially evident in the assertion of economic liberty. Moreover, I suggest that such arguments are to be seen as practical necessities in the broader battles for social, political and economic power during the nineteenth century. In asserting this, I highlight the way in which the middle-class argument for freedom of the press acted to disenfranchise the already fragile working-class movements, and cement their own position ideologically and politically in the ascendancy.⁷⁷ I will demonstrate this by highlighting the role of The Association for the Repeal of Taxes on Knowledge, and the practice and arguments of some of its key activists - John Bright and Richard Cobden.

The Association for the Repeal of Taxes Against Knowledge was established in 1848 and largely grew out of the failure of a working-class Chartist spin-off group called the Newspaper Stamp Abolition Committee. The Association's members included its founder and secretary, Collet D. Collet; John Bright; T.

⁷⁷ I am aided here in my analysis by drawing on the work of G. Boyce, J. Curran and P. Wingate eds. *Newspaper History: From the Seventeenth Century to the Present Day* (California, Sage Publications, 1978), and J. Curran and J. Seaton, *Power Without Responsibility, the Press and Broadcasting in Britain* (New York: Routledge, 1997).

Milner-Gibson; George Jacob Holyoake; Joseph Hume; Richard Cobden and Francis Place. The aim of the movement was to end taxes on knowledge and in doing so 'improve' the literature for the working classes. The Association's main argument was that working-class people would improve their lot by self improvement by buying 'intelligent' and 'moral' newspapers if they were cheap enough. Not only would a cheap press provide useful information for the working-classes, it would also awaken their appetite for knowledge and stimulate them to read further. The main organ of the Association was the *Potteries Free Press*, an unstamped penny weekly owned by Collet D. Collet. In the very first edition of the *Potteries Free Press*, Collet sets out its principles and aims, the foremost of which was to highlight the fact that 'the issue of Parliamentary Reform takes precedence of all others in point of interests since it lies at the root of the vast majority of the grievances complained about by the working-classes of this country.'⁷⁸ In addition to the extension of the franchise the *Potteries Free Press* sought also to highlight the inequitable system of taxation that both middle classes and working classes had to endure:

With respect to taxation we are entirely in favour of the gradual substitution of direct for indirect taxation. We desire to have all the taxes removed from all the necessities of life, whether physical or intellectual, and in lieu thereof, a graduated Income and Property Tax; a mode of raising the revenue on the nation which we are convinced would be readily acquiesced in by the majority of all thinking minds in the country.⁷⁹

However, another of the main aims of the *Potteries Free Press* was to highlight the irrationality of the stamp taxation system and it did this earnestly, mainly by antagonising and goading the Stamp Office. In an open letter to the 'Honourable Commissioners of the Inland Revenue' Collet notes the similarities of the

⁷⁸ *The Potteries' Free Press and Weekly Narrative of Current Events*. Saturday, February 12th 1853.

⁷⁹ *The Potteries' Free Press*, Saturday, February 12th 1853.

Potteries Free Press with such (unstamped and un-prosecuted) organs such as *Hansard*, *Punch*, the *Builder* and the *Racing Times* all of which were not stamped and carried similar information (even though they did so separately). The letter challenges the authorities to prosecute the *Potteries Free Press* on these lines. Just below the title header of the *Potteries Free Press* is the phrase: ‘Published in conformity with the practices of the Stamp Office, which permits records of current events, and comments thereon, to be published without Stamp, in the “Athenæum,” “Builder” “Punch” “Racing Times,” &c.’ Such overt mocking of the Stamp Office was a recurrent theme of this publication; as we see in a later edition, Collet highlights the lack of attention given to the *Free Press*:

It is noteworthy that the publication of an *unstamped* weekly journal, in which are given records of current events and comments thereon, should have been permitted by government to live this long. We certainly did not expect this lenient treatment from the authorities of the Stamp Office, and we must confess a slight feeling of disappointment that the lynx eyed guardians of our Inland Revenue have not deigned, as yet, to take notice of our proceedings. [...] Silence however, reigns at headquarters and we are allowed to go on in happy ignorance as to whether the *Potteries Free Press* is conforming to or disobeying the law of the land.⁸⁰

Collet continues:

A successful prosecution of the *Potteries Free Press* would be as embarrassing to Government as an unsuccessful one, and it is thought, perhaps, more prudent to be let alone that which cannot be stirred without unpleasant consequences. The maintenance of this paper until a jury in a court of law shall have pronounced it to be either legal or illegal, is essential to the success of our cause. The battle we are fighting is not one for personal interests; it is a battle for public advantage, a patriotic struggle to emancipate the English press from fetters, which by diminishing its sphere of usefulness, cramp the industry and hinder the education of the people.⁸¹

⁸⁰ *The Potteries' Free Press*, Saturday, March 5th, 1853.

⁸¹ *The Potteries' Free Press*, Saturday, March 5th, 1853.

Although Collet was at pains to highlight the fact that the *Potteries Free Press* was *not* an organ of the Association for the Repeal of Taxes on Knowledge, it is clear from the language used above that Collet set out to highlight the hypocrisy and relative unworkability of the stamp tax. It is unclear why Collet denied any connection with the Association, but it is possible that a wider circulation was attainable without overt connection to the group.

Collet in his *History of the Taxes on Knowledge* sets out the main aims and achievements of the Association in which he played a large part and which, he notes, still had the flickering embers of Chartism within its ranks:

From the People's Charter Union we had come out as a separate committee, not surrendering personally our Chartist views, but putting the repeal of the Taxes on Knowledge as the sole basis of our movement. We had thus suppressed any idea that by joining us any man was giving up his own opinions on the suffrage of the Church Establishment, on National Education, or even on Free Trade in Corn.⁸²

Although many members of the Association did have sympathies with Chartism's demands, and some (as Collet demonstrates) even called themselves Chartists, the overall flavour of the Association had an overwhelmingly middle-class paternalistic tone. Moreover, the essential middle-class character of the Association became more prominent throughout the 1850s, as links with working-class organisations diminished and 'its links with the radical working-class movement [grew] tenuous during the period of 1850-9'.⁸³ Indeed Collet's statement highlighted above took its inspiration, not from remnants of Chartist agitation, but from the pro free-market Anti-Corn Law League.⁸⁴ Thus the flavour

⁸² C. D. Collet, *History of the Taxes on Knowledge* (London: T. Fisher Unwin, 1899), p. 134.

⁸³ J. Curran, 'The Press as an Agency of Social Control: An Historical Perspective', in Boyce et. al., *Newspaper History*, p. 57.

⁸⁴ See Collet's admission that 'We cannot pretend that it was an original policy of our own. It was that of the Anti-Corn Law League [...].' Collet, *History of the Taxes on Knowledge*, p. 135.

of the Association for the Repeal of the Taxes on Knowledge was, if not at its inception then soon after, distinctly middle-class.

As such, the sentiments of the association were greatly sympathetic to the mechanisms of the market, and the move towards an end to the monopolisation of the established press always expressed a tone of authority and forthrightness. Such a tone of authority is well represented (albeit innocently and idealistically) in Collet's recollections when he notes that the movement, after its development out of the Newspaper Stamp Abolition Committee, was now comprised of 'an upper circle of public men', and who were 'persons of some position'.⁸⁵

As Curran notes, the 'principal attraction of the repeal campaign was, of course, the realisation that, if press taxation was cut and newspaper prices halved, there would be an enormous expansion in the popular press',⁸⁶ which would put an end to the monopoly on the daily newspaper press held most notably by the *Times*. More importantly though, Curran describes the activities of the association as a key driver in the gradual disenfranchisement of working-class interests. As the middle-class campaign gained ground and thus more power and influence, the repeal movement grew ever more distant from working-class associations. As the locus of power was taken out of the hands of working-class movements for press reform, the middle-class argument gradually gained general acceptance, thus disempowering large sections of working-class agitation which sought an end to press restrictions. In a more recent work, Curran and Seaton⁸⁷ note that the weakening of controls, and the eventual reform of the press, highlight the ascendancy and increasing power base that middle-class elite entrepreneurs were

⁸⁵ Collet, *History of the Taxes on Knowledge*, p. 137.

⁸⁶ Curran, 'The Press as an Agency of Social Control', p. 57.

⁸⁷ J. Curran, & J. Seaton, *Power Without Responsibility, The Press and Broadcasting in Britain* (New York, Routledge, 1997).

developing. Not only did the end of the 'taxes on knowledge' mark the end of official censorship legislation, it also marked the end of the radical press:

Both the extent and permanence of the eclipse of the radical press as the dominant force in national popular journalism was due to structural changes in the press industry. The industrialisation of the press, with its accompanying rise in publishing costs, led to the progressive transfer of ownership and control of the press from the working-class to wealthy businessmen [...].⁸⁸

Furthermore, the middle-class ascendancy provided the dynamics that would ensure that working-class interests would be subsumed into the rhetoric of middle-class debate, and it also ensured that any working-class resistance or non-compliance would be associated with recent failures of working-class organisational activity, such as that of the 'Peoples Charter Union' during the early 1850s. The middle-class papers:

offered a very different view of the world from that of the early radical press they supplanted. Papers like the *Northern Star* had amplified class conflicts in the local community. [...] In contrast, the new local commercial press tended to block out conflict, minimise differences, and encourage positive identification with the local community and its middle-class readership.⁸⁹

The theoretical stance of the Association of the Repeal of the Taxes on Knowledge was largely a development of the utilitarian stance discussed in depth in the previous chapter, with a number of key differences. Firstly, the later liberal reform movement no longer had to structure its arguments on overtly paternalistic lines, as the force of enculturation and assimilation into capitalistic values was much stronger in 1850 than it was in the 1820s or 1830s. Arguments that once espoused freedom of the press to provide the working man with a means to better himself were replaced by arguments that took comfort in the failure of organised

⁸⁸ Curran & Seaton, *Power Without Responsibility*, p. 41.

⁸⁹ Curran & Seaton, *Power Without Responsibility*, p. 58.

labour, most notably the Peoples Charter Union and other Chartist organisations. As such the language and tone of freedom of speech changed significantly, with almost an assured confidence, as Collet indicates when he describes the membership of the new Association as men of ‘the upper circle’ and ‘persons of some position.’⁹⁰ Secondly, abstract philosophical pronouncements that focussed on utility maximisation present in previous utilitarian arguments for freedom of the press, had to be ‘diluted’ so that ‘ordinary working men’ could benefit from its message.⁹¹ Such abstract complexities were no longer a part of the mainstream liberal argument, as the ‘search for knowledge’ was now engrained within the radical political culture of the day. It was simple enough to argue that the taxes on knowledge were a hindrance to progress, progress which was manifested in terms of the opening up of markets which would have beneficial effects on the conditions of the working man. What is clear, is that the justification for freedom of the press was not made on grounds that had their basis in notions of freedom of expression as a necessary component of a conception of ‘the good life’, but were more closely linked to the aspirations of a middle-class elite striving for the opening up of markets and the generation of profits whilst at the same time exercising subtle mechanisms of social control over the so-called lower orders. The liberty argument, fixed to economic liberalism, was the central theoretical component of the middle-class ascendancy.

Given that there was an overwhelming desire to end monopolisation and strict press controls because of market considerations and profit maximisation, one could miss the often implicit political philosophy of free speech that emerged within liberal circles at this time. Even though I assert that market considerations were paramount, I feel that this interpretation alone, although powerful, would fail to illuminate the intricacies that *did* exist in the middle-class liberal

⁹⁰ Collet, *History of the Taxes on Knowledge*, p. 137.

⁹¹ J. A. Roebuck’s *Pamphlets for the People* would be a good example of this.

justifications for freedom of the press. I do not dissent from the view that wider contextual conditions and drivers were an important component in shaping the defence of free speech, but some insight into theory still needs to be made. To do this, I will turn to the work of leading Victorian liberals, Richard Cobden and John Bright.

Richard Cobden (1804-1865) was part of the radical liberal flavour of politics that emerged during the middle years of the nineteenth century. Cobden was an MP and had a strong commitment to the free market, expressed particularly in his active participation within the Anti Corn Law League - fighting against the 'iron hoof of monopoly'; and also in attacking aristocratic privilege and corruption. Cobden was also a Quaker and as such had high moral standards, evidence of which often reverberated in his speeches, letters and articles. In his unpublished PhD thesis, Farrar argues that Cobden deserves more attention from scholars than he has thus far been given, as he argues that Cobden made great contributions to the social, economic and political landscape of Britain during the nineteenth century.⁹² Farrar goes on to highlight the way that Cobden's politics was centred around key themes, themes that included the notion that social progress was dependent on 'the interaction of economic, religious and educational factors.'⁹³ Thus a mixture of religious and economic concerns helped shape Cobden's view of politics and social life.

As noted, Cobden was active in the Anti-Corn Law league which sought an end to taxation on grain and other harvested crops; and as an agitational organisation, it was important that as much information and publicity be generated about the Anti-Corn Law movement as possible. Yet the Anti-Corn Law League itself was hampered by press legislation prior to the abolition of stamp taxes. Publications

⁹² P. N. Farrar, *Richard Cobden: Educationalist, Economist and Statesman* (University of Sheffield, 1987).

⁹³ Farrar, *Richard Cobden*, p. iv.

such as the *Anti-Corn Law Circular* and the *Anti-Bread Tax Circular* were taxed as usual; but these papers generally avoided commenting directly on the stamp taxes, as they did not want to divert attention away from their main aims. Although this *was* a consideration, another reason that such publications avoided commenting on the taxes was because they knew that the established press were indeed sympathetic to the stamp taxes as they ensured that the 'cheap' press could *not* flourish and potentially threaten their revenues. However, a good number of the established press were sympathetic to the views of the Anti-Corn Law movement and as a result, such organs did not want to alienate themselves from it. As such, any direct mention of the stamp tax in the Anti-Corn law press could potentially alienate it from the established press. Even the more sympathetic Cobden scholars note that Cobden himself was reluctant to comment directly on the stamp taxes initially, because he wanted to ensure that he did not displease the established press by making such calls.⁹⁴

Cobden shared this conception of politics and morality in his public life, contributing to pertinent debates in the Commons and at public meetings and in the press. As with many liberals in mid-Victorian England, Cobden was sympathetic to the notion that a free press was beneficial to the masses, and after pressure from a number of like-minded individuals, joined the Newspaper Stamp Abolition Committee in 1849, which, as we have seen, later developed into The Association for the Repeal of Taxes on Knowledge in 1851. As noted, a key theme of the Association was the promotion of education for the working-classes and an oft quoted statement from Cobden echoes the intrinsic value that he and the association put on the newspaper press as an organ of self betterment for the working man; - 'a penny newspaper press would do more to educate the millions

⁹⁴ In addition to Farrar noted above, other sympathetic contributions include: D. Read, *Cobden and Bright, A Victorian Political Partnership* (London: Edward Arnold Ltd., 1967); N. C. Edsall, *Richard Cobden: Independent Radical* (London: Harvard University Press, 1986).

than all the schoolmasters in the land.’⁹⁵ Newspapers in particular were a compelling means of providing moral guidance and useful information. This letter to the *Manchester Times* provides a good example of Cobden’s reasoning:

I regard the influence of public opinion, as exercised through the press, as the distinguished feature in modern civilisation, and which by its progress or degradation must determine the period of existence of civilisation itself. The engine of good or evil can exist only by the breath of the public to award wisely its suffrages amongst the contending candidates of the periodical press.⁹⁶

News ‘should be stated as concisely as is constant with clearness, and should be so arranged as to communicate the greatest amount of information with the least demand on the time and labour of the reader.’⁹⁷ Thus we have a view of the press that provides a specific social function in that if allowed to circulate freely and unhindered from constraint, it would provide society with a progressive social dynamic. Moreover, it is the competing perspectives of the press that will be judged or rejected by the public, and as such, a paper will succeed or fail according to the market. The free market of ideas metaphor has already been highlighted above, and its articulation by members of the middle-class press reform movement such as Cobden, reinforce the power of such arguments within the context of seeking an end to press restrictions.

However, it would be an oversimplification if this ‘free market of ideas’ metaphor were not placed under any further critical scrutiny in this context. Such an analysis would underestimate the role that key activists had in helping to define the largely middle-class free press agenda, in particular in terms of the ideological weight they had in the middle-class movement to reform that press. Like a large number of activists in the Association for the Repeal of the Taxes

⁹⁵ Cobden, Cited D. Read, *Cobden and Bright, A Victorian Political Partnership*, p. 186.

⁹⁶ Cobden, cited Farrar, *Richard Cobden*, p. 404.

⁹⁷ *Manchester Examiner*, Saturday, January 10th, 1846.

Against Knowledge, Cobden was an MP, and played a significant role in the pressure for the repeal of the stamp taxes within Parliament not only to advance the free market, but also to ensure that the working classes would have the 'appropriate sources of education for their betterment'. In other words, Cobden's position continued the role of the middle-class press, by ensuring that any working-class agitation could be pacified and subsumed into the burgeoning market ideology. This was clear from the language that was used in some of the publications that emanated from this middle-class movement to repeal the stamp taxes; the language of social control was strong and sometimes explicit. Titles such as *The Popular Educator*, *The Working Man's Friend and Family Instructor* and the *Freeholder*, all proclaimed the virtue of high moral attitudes with an emphasis on free trade. *The Popular Educator* for example, from week to week provided 'instruction' on matters relating to history, botany, astronomy and of course political economy. The aim was to reach as many poor and working-class people as was possible in a cheap weekly. Such publications were obvious about their intentions and their role:

There are numerous instances in every hamlet in England, of dwarfed intellects and disappointed aspirations, in consequence of the want of means to procure even elementary works on common subjects in this age of cheap literature; and there are thousands of you throughout the land whom a simple and concise digest of the facts and hearing of leading subjects would have converted into diligent and earnest votaries of knowledge, but whom confused plenty has disgusted and sent away empty.⁹⁸

In the pages of such weeklies, the emphasis was on education, which would serve to minimise conflict between master and worker, as this excerpt from *The Working Man's Friend and Family Instructor* highlights:

If artisans and others feel that their pay is not just or equitable, they have an undoubted right to lay their grievances before their masters.

⁹⁸ *The Popular Educator*, April 13th, 1852.

[...] but this should always be done in a friendly, peaceable, and respectful manner. [...] Agreement, kindly feeling towards each other, and a sense of reciprocal dependence should always prevail.⁹⁹

Cobden was sure of the value of a popular press and saw the need for such a paper which did not pander to the lowest common denominator, as many other of the dailies did. Thus, after the abolition of the stamp tax in 1855, Cobden with the financial backing of Joseph Sturge, published the London based *Morning Star* and the *Evening Star*. The papers proclaimed that they 'will pander to no popular passions. At all times the *Morning* and *Evening Star* will endeavour to enforce the sound teachings of political economy and to apply the right principles to the Science of Government'.¹⁰⁰ The content of the *Morning Star* was a mixture of foreign news and market news with advertisements on the front page. The focus was clearly on 'educating' the working classes in the business and the interests of the middle class, with news of economic interest and political news. Interestingly, the language used mixes the interests of the middle classes with those of the working classes, as if representative of them both, but still echoing middle-class sentiment. The following excerpt on taxation is a good example:

There is no subject of domestic policy which calls more attention of our statesmen and the Legislature than that of taxation. [...] The incidence of taxation, as a whole, is also inequitably and oppressively laid on the shoulders of the classes who live by labour, while the proprietors of the kingdom escape their fair share of the burden. As a contribution to popular enlightenment on this important matter we propose to put a few facts and arguments together, our main object being to assist in compelling a reconstruction of the entire system on a sound and equitable principle. [...] In examining these duties, we have confined ourselves to the proof of the simple fact, that they fall almost entirely on the working and middle-classes, and scarcely reach the possessors of the vast property of the kingdom.¹⁰¹

⁹⁹ *The Working Man's Friend and Family Instructor*, Saturday, February 16th, 1850.

¹⁰⁰ Farrar, *Richard Cobden*, p. 416.

¹⁰¹ *The Morning Star*, January 6th, 1857.

Unfortunately for Cobden and Sturge, the sale of the *Morning and Evening Star* was limited, with the new one penny *Daily Telegraph* securing the majority of the cheap press market. It seems that the papers' close association with Richard Cobden, a Quaker, and his well known and generally unpopular anti-Crimean war views proved too much for the reading public and the paper never really made much of an impact on the London press market.

Interestingly Farrar cites 'recent work'¹⁰² which argues that the various middle-class movements which called for a repeal of the stamp tax were committed to socialisation of the working class into the existing capitalist order. Farrar notes that this was not the case as Cobden and the *Morning and Evening Star* were actively disowned by the middle-class press and as such could not have been part of this 'conspiracy'. He notes that 'the promoters of the *Morning Star* held that the middle and working-classes both needed liberation, and that their economic interests rightly understood, were identical.'¹⁰³ However, Farrar is missing the point here, in that although the largely middle-class movement to repeal the stamp taxes did not always agree with each other on specific issues, the functionality of encouraging acceptance of the market system is a clear example of socialisation of the working classes into the market system. Moreover, organs such as the *Morning and Evening Star* viewed working-class organisations as a potential threat to middle-class aspirations. They criticised the activities of Chartists and Mechanics Institutes, and the rejection of Trades Unions by Cobden (at least those which 'sought interference into matters properly concerning management') echoes a strong pro-market tone that organs such as the *Morning Star* promoted. If one looks at the specific recommendations that Cobden made for the *Morning Star* on matters regarding layout and content of the paper, one can see that the authoritative paternalistic tone is well in evidence. Cobden notes

¹⁰² Farrar, *Richard Cobden*, p. 418-419, citing Curran et al, *Power Without Responsibility*.

¹⁰³ Farrar, *Richard Cobden*, p. 418-419.

that 'Moralising and reasoning of an abstract nature must be avoided. The views of the paper should be instilled through the clear discussion of specific issues and incidents.' The readers 'must be taught without their knowing it'. As such the presentation of articles was intended to be different from the established middle-class press.¹⁰⁴

Even after the final repeal of taxation on the press (the duty on paper) in 1861, Cobden was aware of other threats to freedom of the press. The first was the monopolisation of the press by papers such as *The Times*. Cobden argued that such a monopoly was not in the interests of the public as only one set of opinions could be heard by the public. This was against his view of the press acting as an organ of vigorous public opinion and debate. This of course echoes Mill's worries concerning the threat of public opinion in stifling individuality. Cobden is aware here that a monopolisation of opinion in the press acts in the same vein as Mill's notion of the weight of public opinion in stifling individual development:

The London daily press has been hitherto a MONOPOLY, and, like all monopolies, it has profited at the expense of the public. When, by the exertions of a small band of persevering politicians, the Total Repeal of the Stamp Duty was secured in 1855, it might have hoped that the monopoly established twenty years previously would have been broken up. [However], under this monopoly the public are expressly prohibited from obtaining the advantage of competition. [...] The result, therefore, comes to this- that the "high priced" papers are in a combination to limit, by means of price, the spread of intelligence and the diffusion of knowledge. In this, indeed, they well serve the purposes of those to whose ends they are subservient- for the less the enlightenment of the masses, the smaller, according to the notions of most of our rulers, the difficulty of guiding and governing the people. It is with this regard that the proprietors of the Morning and Evening Star, - men who have at heart the diffusion of healthy knowledge, the progress of reform, and the establishment of good government, - have determined that the public shall have the

¹⁰⁴ Farrar, *Richard Cobden*, p.426.

advantage of a First Class Daily Newspaper, free from party and the combination of high price.¹⁰⁵

Another threat to freedom of the press was perceived to emanate from an 'unhealthy' relationship between Parliament and the press. Famously, Cobden argued that *The Times* had too close a connection to those in power. Indeed, he argued even as early as 1853 that newspaper editorial policy was under the influence of certain members of Parliament. He would have liked the *Morning Star* to overshadow the authority of *The Times* but it remained an 'institution of the Realm'.¹⁰⁶ 'The public could not justly weigh the opinions of a paper unless it knew what connections it had.'¹⁰⁷

A close friend and ally of Cobden was John Bright, (1811-1889) who was also involved in the Association for the Repeal of the Taxes on Knowledge as he too was of the opinion that the taxes on knowledge condemned the poor to a life of misery and subservience. Bright was a notable orator and travelled the country giving speeches and addressing public meetings on the day's most pressing issues. One issue that Bright spoke on repeatedly was on the repeal of the newspaper taxes. Bright like Cobden often courted criticism from the established press, in particular *The Times*, for demanding an end to the newspaper taxes and as such, bringing an end to the monopoly that *The Times* in particular had enjoyed. Bright also had a hand in publishing a number of political organs, many of which had their base in the north of England (Bright was MP for Durham in 1843 and then Manchester in 1847). One notable example was the *Manchester Examiner*. Like Cobden's London based *Morning* and *Evening Star*, the *Manchester Examiner* was specifically aimed at the working classes and as such courted a working-class readership in the hope of raising its sights. However, this

¹⁰⁵ *The Morning Star*, Monday, March 17th, 1856.

¹⁰⁶ Farrar, *Richard Cobden*, p. 427.

¹⁰⁷ Cobden cited Farrar, *Richard Cobden*, p. 428.

was always done with overtones of middle-class sentiment, particularly when emphasising the benefits of *laissez-faire* political economy:

The Free Trade movement [...] is a movement altogether of, from and by the people, for a popular object – an effort of the industrious classes, as such, irrespective of party and sectarian distinctions, to wield the powers of opinion and franchise for an end of their own choosing. This movement has given the industrious classes a new sense of their rank and standing in the state. It has taught trade, self respect and self reliance – shewn it at once its honourableness and its power given public status to its most eminent and most enlightened men, - and called forth a spirit of sympathy and co-operation among all engaged in the pursuit of industry. It is a movement that has added incalculably to the *prestige* of truth and knowledge, as the governing power of the country. Never was “useful knowledge” so rapidly diffused among a people, as during the past seven years: and never was popular intelligence brought into so close and immediate contact with politics and legislation. For the first time in history, the multitude have been made practically acquainted with the facts and laws affecting their physical and economical condition. For the first time in history, economical truth, reinforced by alliance with moral right, and advocated with all the energy of religious earnestness, has become the life and soul of a popular political movement.¹⁰⁸

We can see then that Cobden, Bright and Collet are pertinent examples of those embracing a liberal ideology which sought to embed the virtues of fashionable economic theories into the population. As with the Philosophic Radicals decades earlier, the function of arguments for freedom of the press from these liberal activists serve to engender general acceptance of the prevailing social order. Through the education of the masses into an acceptance of in vogue economic doctrines, coupled with high moral virtues contained in the pages of the liberal press, the emphasis on individual moral responsibility started to emerge as the focal point of their analysis. Rather than any doctrinaire adherence to specific

¹⁰⁸ *Manchester Examiner*, Saturday, January 10th, 1846

scientific rules, as had been the case with the utilitarians, the individual rather than the greatest happiness of the greatest number was paramount.

It has been the intention of this section to highlight the mainstream liberal praxis of freedom of speech which was articulated in calls for an end to the stamp duties. I have demonstrated that arguments for freedom of the press, that are framed within the context of the liberty argument for freedom of speech, have been grafted on to the battle to suppress working-class agitation, and ensure middle-class dominance. Thus we have what I term a 'thin' political philosophy of freedom of speech which is immersed in the wider concern to 'ensure that the press provided institutional support for the social order.'¹⁰⁹ The enculturation of working classes into the acceptance of middle-class opinion which operationalised a level of social control, was derived from an affirmation of individual responsibility and compliance to specific moral codes. The emphasis on 'self-education' for the working classes as a means to break free from the chains of ignorance, was transposed by the liberal press into education for 'individual self-fulfilment and advancement.'¹¹⁰

The argument for freedom of the press, as Curran notes 'was never actuated primarily by a libertarian commitment to freedom and diversity of expression',¹¹¹ though fundamentally liberal, they were contrived to restrict liberty of the masses by placing the middle class in the ascendancy. He continues:

All that had changed was a growing commitment to positive indoctrination of the lower orders through a cheap press, and a growing conviction that free trade and normative controls were morally preferable and more efficient control system than direct controls administered by the state. Underlying this shift was the growing power and confidence of the Victorian middle-class, which dominated the legal campaign for the repeal of press taxes and

¹⁰⁹ Curran, 'The Press as an Agency of Social Control', p. 61.

¹¹⁰ Curran, 'The Press as an Agency of Social Control', p. 72.

¹¹¹ Curran, 'The Press as an Agency of Social Control', p. 61.

recognised in the expanding press a powerful agency for the advancement of their interests [...].¹¹²

Thus the liberty argument was incorporated into an ideological battle for political and economic power and as such a tool for social control. The assertion of the free market, and its linkage to the betterment of the working classes, helped propel the thin liberty argument for freedom of speech into the front line of the ideological battle between a mass working-class and a middle-class elite.

5.7: Conclusion

As noted in the initial section of this chapter, there is no definitive liberal praxis of freedom of speech to be identified. The more refined analysis provided by John Stuart Mill is in stark contrast to the less sophisticated and more overtly politically motivated ‘thin’ arguments provided by mainstream liberals such as Cobden and Bright. It is important to make this distinction between the two sets of arguments as the arguments for freedom of speech (and therefore freedom of the press) although emanating from core beliefs that stem from the Enlightenment - the progress of knowledge and the assertion of liberty etc. - differ in significant ways. For example, the arguments provided by Mill offer a unique analysis of the virtues of individuality and diversity in a dynamic flourishing society. The arguments from liberals such as Cobden and Bright and other leading liberals of the day, stress the benefits of social compliance to middle-class values and leadership, something that as we have seen, was articulated years before by James Mill. Conformity to specific ways of living was something that J. S. Mill campaigned against all his life, the virtues of experimentation and eccentricity echo throughout *On Liberty*, whereas such ideas would have been seen as dangerous and irresponsible by middle-class elites seeking working-class conformity. Hence ‘liberal’ justifications for freedom of speech during the

¹¹² Curran, ‘The Press as an Agency of Social Control’, p. 61.

nineteenth century are to be seen as almost polemical. On the one hand we have Mill defending individual expression from the weight of conformity, on the other we have liberals striving to make the masses conform to belief systems which would ensure that liberty and freedom for the people at large was never attained.

Aided by the Association for the Repeal of Taxes on Knowledge, the examples of the mainstream liberal press provided above highlight the liberal press's vindication of free trade and an assertion of the role of the press as an educational tool for the lower orders. These arguments should not be seen out of context of the middle-class interests which they sought vigorously to promote. Thus I assert that the mainstream liberal praxis of freedom of speech, unlike Mill's arguments, were centred around enculturation and control, rather than any specific commitment to freedom or liberty. The arguments used to promote freedom of the press, have to be seen within the context of a middle-class rise to economic and political dominance rather than arguments for freedom of speech in their own right. Hence the assertion of a 'thin' praxis of freedom of speech argument is as suggested one that should be seen as actually inhibiting the liberty of the masses, in that poverty, injustice and misery were maintained even when liberal arguments for press 'freedom' won through by the victory of the market.

Finally and returning to Mill, in terms of the philosophy of freedom of speech, Mill's arguments of course offer us a powerful defence of freedom of speech and I have set out the components of these arguments above to demonstrate just this. However, as I have suggested, Mill's arguments in *On Liberty* lose some of their potency when seen in the context of his other works, especially when one considers his advocacy of *laissez faire* political economy and his general distrust of co-operative social systems. This assertion, however, should not condemn Mill's arguments to being perceived as a more sophisticated version of the mainstream liberal argument. It is important to note that Mill's conception of liberty went far beyond those pronouncements of free trade that were practised *ad-nauseum* by the liberal press. Mill's shortcomings were that he did not fully appreciate the illiberal tendencies of the market system he supported.

Furthermore, he failed adequately to recognise the importance of equality as a necessary component of a truly free society; it will remain to be seen in the following chapter what exactly the concept of equality offers to a re-articulated form of Mill's arguments as I explore the socialist praxis of freedom of speech in the nineteenth century.

Summary

The development of a Millian justification of freedom of speech has been highlighted with reference to early newspaper articles and an analysis of *On Liberty*. Some of the controversies surrounding Mill's argument have been highlighted and the means by which such controversies may be overcome, have been suggested. A tension between Mill's philosophy and the concept of equality has been raised which may have implications for even a sophisticated 'liberal' defence of freedom of speech such as Mill's. However, Mill's work should be set apart from the mainstream liberal discussion of freedom of speech which was grounded in concerns about the potential threat of organised working-class labour to the market system. As with utilitarianism, the burgeoning market and the need to control large sections of the populace were prime motivations in the middle-class liberal argument. However, this justification of freedom of speech should be set apart from utilitarian justifications as the contextual landscape had changed to a large degree by the middle years of the nineteenth century. No longer was overt paternalism a theme within the praxis of free speech, now a more inclusive language of shared interests and the assertion of individuality was used. Individuals such as Cobden and Bright should be seen as exemplars of middle-class assertiveness as too should the role and function of the Association for the Repeal of the Taxes on Knowledge.

CHAPTER SIX

Socialism: Free Speech Reasserted

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Socialism: Free Speech Reasserted

- 1: Introduction
 - 2: Focus
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 - 4: Free Speech as an End in Itself: Richard Carlile
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CHAPTER SIX

Socialism: Free Speech Reasserted

Of course absolute Freedom of Opinion includes the right to the unfettered expression of opinion by means of both voice and pen. Neither penal laws nor priestly despotism, not sectarian intolerance, nor mob violence can be permitted to interfere with the freedom of the platform or the press, without violating that right which MILTON wisely held to be the most important and valuable of all liberties. For let this right to be claimed and maintained by each man, not merely for himself, but also for his fellow men, and no evil power can prevent the progress of the Human Race from ignorance, error, slavery, and misery, to knowledge, wisdom, liberty, and happiness.¹

6.1: Introduction

It is my intention in this chapter to analyse the socialist justification of freedom of speech during the nineteenth century in Britain. This task is complicated by the fact that free speech was given varying status within socialist thought and praxis during the nineteenth century. Unlike utilitarianism or liberalism, where free speech is a major component of the doctrines' philosophical make up and political requisites; free speech, within what I will term the 'socialist sphere of analysis', has varying levels of importance and significance to different actors and groups. As Williams and Pearson note '[t]he political theory of nineteenth-century British socialism exhibits a wide range of attitudes and beliefs about industrial society [...]. At one end of the spectrum of ideas we find socialism rejecting the values of industrial capitalism [...]. At the other end of spectrum we find the acceptance of industrialism and its benefits but a rejection of its forms

¹ *The Friend of the People*. No.2, December 21st 1850.

and organisation.² Moreover, when attempting to define socialism within this context, it is important to note that the idea of socialism was largely raw and underdeveloped (at least until the 1860s); this will have to be borne in mind, particularly as some writers and agitators that are referred to within this chapter may hold views that would not necessarily ‘neatly’ fit into what might generally be known as socialist thought. However, they are included because of their commitment to the interests of the working classes and are important characters within the history of socialist politics. For example, William Cobbett in his early years was a staunch monarchist and Tory but is included in this section as a testament to his work fighting for the cause of the poor and in defence of the interests of the working-classes. Given the varying range and scope of socialist political philosophy during the nineteenth century, it should be of no surprise that such a breadth of focus should be taken into account in my analysis of free speech. Moreover, until Robert Owen and William Thompson, the phrases socialist and socialism were little used. This chapter, therefore, will capture and analyse the range of debates concerning freedom of speech, which emanate from radical working-class politics, within the very wide parameters of what can be termed (though I acknowledge, not unproblematically) socialist thought during the nineteenth century.

Two other important considerations should be borne in mind within the context of this chapter. Firstly, there can be little doubt that Robert Owen and William Morris were two of the nineteenth century’s leading socialist figures. However, this chapter makes only a sparse mention of Owen and, other than in this introductory section, does not discuss William Morris. The reason for this is simple. Owen and Morris did not feature significantly in the debates around free speech and a free press as they both saw that these were largely unimportant

² Pearson, & Williams, *Political Thought and Public Policy*, p. 102.

elements of the socialist programme. For Owen, socialism would emerge through education as experienced by people living within co-operative communities. Such communities would emerge as a result of direct guidance from himself. Morris also believed that education was important but that enlightenment stemmed from within and not through exposure to a free press. Such 'messianic' perspectives assert that knowledge and understanding depended not on the circulation or free exchange of ideas but on the mass of working people following enlightened leadership, as only the enlightened guides were in possession of the means to comprehend and articulate the totality of the socialist vision.

Moreover, the lack of representation of thinkers such as Owen and Morris is also due to their particular lack of interest in and attention to arguments for freedom of speech. Such arguments were historically speaking largely 'not an issue' within the confines of socialist political activity and analysis, as the 'solutions' or 'remedies' to the constraints upon the working people were perceived to lie elsewhere and not in or around arguments for freedom of speech. Finally, it will become evident that the main focus of this chapter is on working-class radicalism during the first half of the nineteenth century; this is primarily because debates around free speech that emanated from socialist organs were generally (but not exclusively) confined to the period between 1819 and around 1850. Thus the focus of the chapter places greater weight on ideas that were generated before the turn of the mid-century when a small number of socialist thinkers and writers prioritised freedom of speech. The substance of the chapter will be an analysis of radical socialist or collectivist nineteenth-century pamphlets, journals and newsletters, monthlies and weeklies and their editors, writers and publishers.

This chapter will be divided into a number of interrelated parts and the first will focus on the core components of socialist thought. This is an important part of this chapter in that it sets out the parameters of the socialist sphere of analysis. Secondly, we examine arguments for freedom of speech that emanated during the early years of the nineteenth century. Here we see the likes of Cobbett and Hone challenging the Old Regime of church and state, and arguing for freedom of

speech as a component of political reform. This section will look closely at those pamphleteers and socialist radicals that have some stake in the heritage of socialist thought in Britain and see freedom of speech exemplified in a free press as, if not fundamental to their struggle, then a major part of it.

From this relatively immature socialist analysis which seeks to widen the political franchise and assert an accountable legislature, we move on to the third section where we examine arguments from socialist radicals who see freedom of speech as a major component of their political programme. Here we see agitators such as Richard Carlile who sought freedom of speech almost as a distinct right in itself, and combined this with calls for Parliamentary reform and a better deal for the working man. The theme of an emerging political consciousness, in part facilitated by a free press is a major theme in the fourth section of this chapter. Here we observe the formulation of a distinct class dimension in the arguments for freedom of speech. Not only do we see this class identity emerging in the arguments, but also a sharp and focussed critique of capitalism, emerging from the likes of George Jacob Holyoake, Henry Hetherington and Julian Harney. This theme is even more resonant in the fifth section of this chapter in which we examine the arguments of Marx.

Although Marx's writings on free speech at this time were generated outside Britain, I contend that their inclusion within the context of this survey is warranted on three counts. Firstly, the philosophical and historical importance of Marx's work should not be underestimated; no historical or theoretical discussion that has socialist thought and tradition as one of its main foci should ignore this. Even during the mid-nineteenth century, Marx and Engels's work was starting to influence socialists in Britain, and their work was often translated into English

and reproduced within the radical press.³ Moreover, even today, twelve years after the fall of the Berlin wall and the so-called ‘death of Marxism,’ Marx’s ideas still have resonance in academic and scholarly discourse. Secondly, very little attention has been given to Marx’s perspective on freedom of speech and freedom of the press⁴ and as such an exploration of this aspect of his work should be included as I argue it provides a ‘more mature’ socialist justification of freedom of speech than earlier socialist writers. I feel that in including an analysis of Marx within the context of this chapter I am providing some evidence of progress in the development of arguments for free speech within the socialist tradition. I argue that the earlier writers on freedom of speech acted as a precursor to Marx’s writings as many of the arguments that writers in the 1820s and 1830s put forward have a similar political philosophy and use of language to that employed by Marx. Thus, the mechanism of freedom of speech is developed and formulated within the earlier arguments and culminates in a more mature and fully rounded defence of freedom of speech from a socialist perspective.

The next part of the chapter will explore the theoretical underpinnings of socialist justifications of free speech. Thus, within the confines of this chapter, I hope to provide an insight into the practical and theoretical components of free speech from the perspective of socialist agitators and thinkers. The focus of this section will be devoted to providing a discussion of the ‘mechanism’ of free speech within the context of socialist thought. The concluding section of this chapter will examine the accountability argument, the truth argument and the liberty argument in the light of the work discussed. From this I suggest that the socialist arguments

³ For Example, the first English translation of the *Communist Manifesto* was published in Julian Harney’s *Red Republican* in 1850.

⁴ Work that does exist includes: A. F. McGovern, ‘Karl Marx First Political Writings: The Rheinische Zeitung, 1842-1843’ in *Demythologising Marx* (Boston: College Chestnut Hill, 1969), and G. Teeple, *Marx’s Critique of Politics 1842-1847* (Cambridge: Cambridge University Press, 1984). Both works are also cited below.

for freedom of speech, despite surface similarities, differ sufficiently enough from those arguments provided by utilitarians and liberals. As such the concepts of equality and fraternity are posited as key components of a socialist defence of freedom of speech; such concepts thus set socialism apart from liberal and utilitarian formulations of freedom of speech. In sum, I suggest that the socialist arguments highlighted present us with a re-assertion of freedom of speech. Also in this concluding section I speculate on the value of freedom of speech to socialism as an idea and as a practical component of socialist society. Here I look at the limits of the socialist argument and suggest that a broader conception of freedom of speech is a necessary component of any socialist programme.

6.2: Focus

The focus of the philosophical justifications for free speech under examination within this thesis stems from the weight given to particular fundamental aspects of the theory in question. As we have seen in the previous chapters, the weight of the utilitarian justification of free speech stemmed from the belief in the theory of utility and the application of this theory to practice. As has been demonstrated, the attainment of utility depended (amongst other things) on unrestricted press freedom. Within the confines of this chapter, a similar method will be deployed in that it is first necessary for me to focus on key elements or strands of socialist political thought, before I explore the conceptualisation and practice of free speech which is set against this theoretical backdrop. I will not, however, dwell too much on this preliminary task, as analyses of nineteenth-century socialist thought and its foundations have been given much attention, especially by socialist historians such as G.D.H Cole, E.P. Thompson and others. I will however, pick out elements of socialist philosophy that offer a 'way in' to discussion about socialism, free speech and its analysis.

In order then to place the discussion of free speech within the parameters of nineteenth-century socialist thought, some common ground or general principles should be developed. It is important to note, however, that no overarching

definition or statement of intent will be provided in this thesis. Berki⁵ reminds us that socialism is difficult to get to grips with because it is all too easy to fall into the traps of 'dogma', 'essentialism', and 'reductionism'. Moreover, he notes that socialism 'is not a single thing, but a range, an area, an open texture [...]'.⁶ Perhaps the best way of thinking about the emergence of socialist thought is that provided by William Stafford, when he states that 'between 1775 and 1830 occurred a remarkable flowering of radical social criticism in Britain. When we survey them, we can see the gradual emergence of ways of thinking that have subsequently been labelled socialist.'⁷ The nature of this criticism emanates from a number of sources which predominantly stem from the onset of the Enlightenment. This new Enlightenment thinking follows on from the victories of the 'bourgeois revolutions'. Again it is worth quoting Berki. 'Socialism is almost exactly coeval with classical liberalism: it is its reverse side, giving expression to the spiritual traumas and social and economic dislocations which were the effects of bourgeois-liberal victories. It became a stream at first of tiny, separate trickles, soon deepening and widening into a mighty river.'⁸ In attempting to characterise socialism Berki goes on to outline what he terms the four basic tendencies of this political and philosophical creed. The first tendency is the commitment to some form of egalitarianism in the sense of a rejection of the notion of the individual as the focus of human activity. What is prominent is the idea that all human beings should be treated equally, irrespective of the circumstances that they might find themselves in. The second tendency that Berki notes is the emphasis on moralism, primarily emanating from Christian socialists and evoking values of social justice, peace, co-operation and brotherhood. It primarily focuses on

⁵ R. N. Berki, *Socialism* (London: J. M. Dent & Sons, 1975).

⁶ Berki, *Socialism*, p. 16.

⁷ W. Stafford, *Socialism, Radicalism and Nostalgia, Social Criticism in Britain, 1775 - 1830* (London: Cambridge University Press, 1987), p. 1.

⁸ Berki, *Socialism*, p. 23.

capitalism's institutionalised exploitative nature. Thirdly and explicitly stemming from the Enlightenment tradition, is rationalism which emphasises the rational, purposeful organisation of human society towards ends that contribute to human progress. This is in contrast to the values of superstition and tradition which are generated by ignorance. The final tendency that Berki highlights is libertarianism, which he says is the most extreme tendency within the socialist sphere, in that it is a value that upholds total freedom and absence of restraint, both internal and external.

If one was to point to leading figures that have had influence on the development of socialist thought, it could read like a complete history of political thought that goes back as far as ancient Greece or Rome. MacKenzie⁹ and Crick¹⁰ note figures such as Plato, Lycurgus of Sparta, Thomas More, Rousseau, Bentham, Paine, Babeuf, Saint-Simon, Fourier and of course Marx as all contributing, in some way, to the 'socialist vision'. However, to go into great detail about the specific individuals that contributed to the development of socialist thought and its political tradition, is to go far beyond the scope of this thesis.

Berki's model should not be seen as a steadfast guide to socialist thought within the context of this thesis. It is meant to be a loose framework and at least a pointer to themes that reverberate through some of the socialist justifications for freedom of the press and free speech that are examined in the chapter: a contextual theoretical précis which provides a backdrop on which the examples of socialist justifications for free speech can be placed. I will return to Berki's model at the end of this chapter and discuss socialist arguments for free speech with reference to his framework.

⁹ N. MacKenzie, *Socialism* (London: Hutchinson's University Library, 1949).

¹⁰ B. Crick, *Socialism* (Milton Keynes: Open University Press, 1987).

6.3: Libel's Dissenters: Revolution and Reform

Having outlined the focus of this chapter, it is now necessary for me to engage more closely with socialist thought in relation to arguments for freedom of speech. A good place to start this discussion is at the beginning of the nineteenth century, when movements for reform replaced the threat of revolution, if only marginally.

As the war with Napoleon came to a close, reform as opposed to revolution seemed to be the new ideal of radical thinkers and movements. Thomas Paine's *Rights of Man* inflamed the heart of many a radical towards the end of the eighteenth century and its impact was no less during the start of the nineteenth. However, the revolutionary zeal that accompanied Paine's work during its early inception gradually turned to enthusiastic calls for reform.¹¹ It was during these early years of the nineteenth century, after the war with France, that it became clear to many observers that the Tory government of the day was corrupt and self serving and that some radical change was needed. As Wickwar notes:

The Government had failed to secure the welfare of its subjects, and the criticism of many of them went to what seemed to be the root of the trouble: they sought a remedy in a change of constitution rather than a change of policy or of men.¹²

The post war slump brought no better life for the majority of working people in Britain, even the middle and upper classes were suffering hardships. No longer could the people blame the war with France and its drain on resources for their

¹¹ The reasons for this change in direction of many of the late eighteenth/early nineteenth century radicals are many and complex. However, a large part of the transition has to be seen in the perceived failure, by many, of the original ideals of the French revolution. The ideals in themselves were not at fault, but the way in which Napoleon contorted these ideals sounded alarm bells in the minds of many radical thinkers and agitators; reform was increasingly being perceived by agitators as the way in which society could be changed.

¹² W. H. Wickwar, *The Struggle for Freedom of the Press 1819 - 1832* (London: George Allen & Unwin, 1928), p. 49.

miserable plight. The answer was becoming clearer, the blame for their plight and its solution lay closer to home. Without any radical reform in the political structure of Britain, reform which gave men the right to have a say in the running of their country, there would be no rest for those who sought to challenge the patronage, corruption and privilege at the heart of the British political system. Those who did challenge the excesses of political privilege provided the 'lower orders' with the ammunition to generate a critical consciousness that would eventually seek to replace the 'oafish' patronage of Parliament with a more democratic system of government. As Hollis argues in *The Pauper Press*¹³, the working-class justification for freedom of the press particularly during the early part of the nineteenth century rested primarily, as seen in other arguments discussed in other chapters in this work, on the extension of the franchise and the repeal of taxes on the poor. The 'Unstamped' press (both working-class and middle-class) during this time was chiefly concerned with highlighting the injustices of privilege and the corruption inherent within such a non-representative system of government.

One such challenger of the *status quo* was Major John Cartwright (1740-1824) an ex-sailor and early pioneer of the cause of political reform (he was politically active even before the French Revolution), who took a diligent part in many of the radical movements of the time. Imprisoned in 1813 for his views, he published a number of reformist works including *Take Your Choice* which was his main work on radical reform and which forms the basis of much of his political philosophy. In addition to *Take Your Choice*, Cartwright wrote *Rights and Liberties, or an Act for a constitutional Parliament*, which was published

¹³ P. Hollis, *The Pauper Press, A Study in Working-class Radicalism of the 1830's* (London: Oxford University Press, 1970).

after he spent a year touring the provinces gauging the discontent of many workers and labourers.

Osbourne notes that 'Cartwright helped to shape the policies which were to influence the mainstream of British radicalism until the middle of the nineteenth century'¹⁴; however, this radicalism was centred around reform rather than revolution as gradual reform was the key to uniting middle-class moderates with radical working-class movements. Even though he was an advocate of peaceful change rather than violent insurrection,¹⁵ in 1820 Cartwright found himself indicted for being:

malicious, seditious, evil-minded and unlawfully and maliciously intending and designing to raise disaffection and discontent in the minds of his Majesty's subjects, and intending to move them to hatred and contempt of the government and constitution as law established.¹⁶

Following this indictment, he was fined £100. However, this did not deter Cartwright as his clear and strident message, particularly aimed at advancing liberty for the poor, could not be more pronounced:

*Every person if not a peer is a commoner, or a member of the democratic branch of the state; and consequently hath, with all other commoners, an equal right to legislative protection, and the means of it by having a vote in electing Representatives of the Commons. To this right the POOR have equal right with, but far more need than the rich.*¹⁷

¹⁴ J. W. Osbourne, *John Cartwright* (London: Cambridge University Press, 1972), p. 18.

¹⁵ See Cartwright's *A Letter to the Luddites* which he urged the working-class to avoid violent insurrection as an example.

¹⁶ Cited from 'The Life and Correspondence of Major John Cartwright', published in 1826 by Cartwright's niece F. Cartwright, in Osbourne, *John Cartwright*, p. 128.

¹⁷ In an extract form a letter to Sir John Bailey, Knight of His Majesty's Justices of the Court of the Kings Bench. Cartwright outlined 23 clauses in his 'Bill of Rights' in which he advocated the 'establishment of Liberty on immovable grounds'. *Black Dwarf*, No. 26, June 27, 1821, p. 926, sections 9 and 10.

As was the case with many radical dissenters of the day, Cartwright had a number of 'near misses' with the authorities, as his publications attacked the corruption and greed of the government; it was becoming clear that in order to get his message across, battles with the courts over his publication practices would become even more fervent.

At the same trial at which Cartwright was being fined £100 for *Take Your Choice*, another political agitator and publisher was also under indictment at the same hearing. Thomas J. Wooler (1786-1853) was not as lucky as Cartwright as he was imprisoned for fifteen months for similar charges to that of Cartwright. Thomas Wooler was a radical reformer who in 1815 published the radical pamphlet *Black Dwarf*, which John Cartwright supported financially and to which he contributed regular articles and letters. *Black Dwarf* was a sharply satirical pamphlet aimed at making 'public men look ridiculous'.¹⁸ In some contrast to other pamphlets, Wooler's *Dwarf* held nothing back in its calls for political reform and justice for the poor. Wooler advocated the notion of 'open constitutionalism' where debates about new forms of political organisation were out in the public sphere and open to scrutiny of government and people alike. The *Black Dwarf* was particularly adept at presenting the *status quo* in stark terms and was often the target of censorship. Like other radical pamphlets, the *Black Dwarf* was vehement in its criticism of the 'establishment press' in which the interests of those in power were represented. Such 'corruption of the press' was perceived as a vehicle of exploitation as the 'so-called' middle-class radical press presented the case of the poor, but with the interests of the rich still firmly in hand, as this critique of the paternalism of the middle-class press highlights:

The weak and ignorant are accustomed to *look up*, as they turn to it, [the press] to their "*bettors*" for such information as it may please

¹⁸ Wickwar, *The Struggle for Freedom of the Press*, p. 57.

them to bestow. Afraid of forming any opinions for themselves, the timid beg them, of those who *live* by *keeping* them *ignorant*, and leaving them destitute. When tyranny was defeated in its open attacks upon the liberty of the people, it devised a more covert, and more successful means of warfare. It flattered the prejudices, and fostered the credulity of the people. It commended their *valour*, that they *might not exert their strength*:- it complemented their *wisdom* that they *might not learn no more*. [...] Both kings and people have been fools enough to follow the advice of the interested knaves; and the consequence is, that they have become the absolute *masters of both* – plundering the one, and imprisoning the other [...].¹⁹

The *Black Dwarf* was particularly eloquent when it came to arguing that the censorship of vehicles such as the *Black Dwarf* was useless, as it only reflected the existence that many working people were experiencing. Unlike much of the utilitarian radical press that was to emerge, and which as we have seen saw that it was enough to merely educate the poor, the *Dwarf* did not patronise its audience. The paternalism of the utilitarians saw that the poor needed to be educated as to the causes of their misery and *guided* accordingly. Wooler and Cartwright knew that working men and women were more than capable of realising and understanding the causes of their misery without such paternalistic guidance. Moreover, they were quite capable of coming up with their own solutions to their problems and need not be patronised by the middle-class press, radical or not. Such a belief in the ability of the poor to comprehend and negotiate their plight is demonstrated in the following passage and combines the case for a free press with the cause of the working man and woman:

These [censorship] laws, and the various inferences which the country magistrates are to be empowered to make at their pleasure, in conformity to the general design of exterminating everything radical, it is presumed will be sufficient to effect the great object of rendering the people loyal and happy. It is presumed the poor will no

¹⁹ *Black Dwarf*, Vol. II, No. 42, October, 1818, p. 666-667.

longer discover they are hungry, or naked when the radical press ceases to inform them of it [...].²⁰

E. P. Thompson in *The Making of the English Working-class* notes that the period of the radical press during the early 1820s was very important in that it paved the way for the emergence of a distinct class consciousness when ‘there came a climactic contest between Old Corruption and Reform.’²¹ This is clearly evident in the writings of the working-class radicalism of the day, as the powers of the press were seen as a constituent part of the movement for reform within the context of the interests of the poor, which were not solely parliamentary. Such interests fermented within the context of such radicalism and laid the seeds of working-class movements that were to come much later.

This aspect is evidenced in the work of another pro-reform pamphleteer - William Cobbett (1763-1831). Cobbett was initially a Tory but after travelling in France and America he became influenced by the work of Thomas Paine; as a result he became more radical and by 1806 was a strong advocate of Parliamentary reform. The first time that Cobbett felt the wrath of the libel laws was in 1810 when he had, a year earlier, criticised the use of German troops by Britain to quell a mutiny in Ely. The result was a conviction for seditious libel and a resulting sentence of two years in Newgate prison. On his release Cobbett continued to attack British policy in the pages of the *Political Register*, particularly the censorial newspaper taxes. Cobbett severely distrusted the ordinary press and sought to enlighten everyday people about the real roots of their day to day turmoil. ‘The root cause of their distress was political and constitutional, and not primarily due to either machinery or profiteering.’²² In his popular *Weekly*

²⁰ *Black Dwarf*, Vol. VI, No. 1, January, 1821, page 16.

²¹ E. P. Thompson, *The Making of the English Working Class* (London: Victor Gollancz, 1980 [1963]), p. 781.

²² Wickwar, *The Struggle for Freedom of the Press*, p. 53

Political Register, later to become the *Political Register*, Cobbett was vehemently outspoken, reacting against the privileges of the establishment and the liberties they took to the detriment of normal working people. Cobbett, however, was despairing of their lack of verve for political change, change that would benefit the middle-classes as well as journeymen and labourers. Seeing working people as being pivotal to change, he reduced the price of his *Weekly Political Register* to two pence in 1816 (later to be known as 'Twopenny Trash'), in the hope of stirring up unrest and dissatisfaction amongst the working class; he also changed its distributed form from a newspaper to a pamphlet. As a result, Cobbett's *Political Register* soon had a circulation of 40,000 and was now the main newspaper/pamphlet to be read by the working classes.

An example of his agitational prowess is evident in his 'Address to the Journeymen and Labourers' in the *Political Register* in 1816. In this issue, Cobbett severely criticised the British constitution which he saw as highly dysfunctional to the majority of British subjects in that it deprived them of the right (as he saw it) to have their say in the running of the country. Although he did not advocate violence as such, the increasing number of riots and disturbances was seen by him as almost a natural consequence of the misery inflicted upon working people, asking: 'when did hunger listen to reason'.²³ Cobbett saw that violence would lead to even greater repression and never viewed it as an answer to the problems of the poor, thus he placed great emphasis upon reform of the Parliamentary system. He was sure that if he could make people aware of the system upon which their misery was founded, they would understand how and in what way government could be reformed. Issue 'No. 18' of his *Political Register* was one of Cobbett's most celebrated attacks on the political system in Britain. In the pamphlet, Cobbett attacked the nature of its constitutional make up and

²³ *Political Register*, No. 20, May 18th, 1816, col. 626

lambasted those in power for exacting vast amounts of taxes from the working people of the country:

As to the cause of our present miseries, it is the *enormous amount of taxes*, which the government compels us to pay for the support of its armies, its placemen, its pensioners, and for the payment of the interest of its debt. That is the *real* cause has been a thousand times proved; and, it is now so acknowledged by the creatures of the government themselves.²⁴

He continues:

The remedy is what we have now to look to, and that remedy consists wholly and solely of such a reform in the Commons, or People's House of Parliament [...]. We must have that first or we will have nothing good [...].²⁵

Twenty thousand copies of the famous 'No. 18' were sold within two weeks, forty-four thousand within a month, and two hundred thousand within the next year.²⁶ In 1817, Cobbett heard that he was again to be tried for sedition and fled to America where he continued to publish the *Political Register* with the help of his friend William Benbow, who was based in London. Wickwar notes that '[I]t was then for the first time that one who was conscious of being a writer with a social message tried to speak *to* (my emphasis) the people instead of speaking for them, to lead them instead of patronising them, and to educate them instead of lecturing their unheeding Government.'²⁷ He goes on to argue that this marked an unprecedented moment in press history, in that the printing press not only became the instrument of the oligarchic Parliamentary Government, belching out government propaganda, but also the instrument of democratic change in terms of its potential to reach a large number of people with its message. I am not sure that

²⁴ *Political Register*, No. 18, November 2nd, 1816, col. 435.

²⁵ *Political Register*, No. 18, November 2nd, 1816, cols. 453 and 454.

²⁶ J. W. Osbourne, *William Cobbett* (New York: Rutgers, 1966), p. 54.

²⁷ Wickwar, *The Struggle for Freedom of the Press*, p. 54.

Wickwar is totally correct in this assertion, as the printing press had already been used in the production of many 'pro-democracy' political tracts; not least Thomas Paine's *Rights of Man*. However, it is correct to assert that this particular medium, cheap to produce and readily available, was pivotal in creating a form of political consciousness that was in part responsible for a new mood of radicalism that sought great change in the political system.

At this period in time, many other similar messages were being echoed from like-minded individuals who saw the use of print as a key means to undermine the corruption of the current political system. The pamphlet or weekly was now being perceived as a potent political force in generating and maintaining political dissatisfaction amongst the un-propertied classes. Rather than aiming to record or report particular events as did newspapers and magazines, the pamphlets sought to effect or shape events, and they were much cheaper to produce and distribute. Also, as newspapers and magazines had to depend upon advertising for their existence, the pamphlets expressed the views of one, or a small number of disaffected individuals, and due to their low cost did not, for the most part, have to depend upon advertising revenue.²⁸

As with many of the pro-reform pamphleteers, Cobbett was also a vehement advocate of a free press which he saw as necessary in order to contribute to widespread liberty in general. As Osbourne notes: 'Basic to Cobbett's ardent championing of a free press was his insistence upon the ability of people to choose correctly between truth and error if an argument was presented without favour.'²⁹ An example of Cobbett's belief in the freedom of the press is revealed in a letter to the Prince Regent regarding the dispute with the American States. He

²⁸ In his *Political Register*, William Cobbett originally refused to allow space for advertisements, though he changed his views later on in the life of the pamphlet and allowed some advertisements.

²⁹ Osbourne, *William Cobbett*, p. 59.

notes: 'If left free, it is impossible that it can, upon the whole produce harm; because, from a free press discussion will flow; and where discussion is free, truth will always prevail [...].'³⁰ Clearly we see Cobbett stressing faith in human rationality as a mechanism by which the truth could be attained. Thus an early example of the truth argument which, as we have seen, has its roots in the Enlightenment belief in rational progress. This stress on rationalism, is present in the arguments already discussed in this work. It is also clear that Cobbett views a free press as a vital mechanism by which it is possible to keep officialdom in check by public scrutiny. As such we can make connections here with the accountability argument already discussed in the introduction to this work and seen in operation in Chapter Three.

Another notable ally of Cobbett was Henry Hunt (1773-1835). In 1800, Hunt was introduced to radical politics by Henry Clifford, a lawyer, whilst in prison for a domestic matter involving a member of the aristocracy, Lord Bruce. Clifford introduced Hunt to like-minded men such as Richard Carlile, Thomas Hardy and John Horne Tooke. It was a natural progression for Hunt to become actively involved in radical politics. Hunt soon became a prominent figure in the radical movement and gained a reputation as a fine orator and the name of the 'Orator Hunt' followed him throughout his career. With Richard Carlile, Henry Hunt was speaking in St Peters field in Manchester in 1819 when the yeomanry charged and killed eleven people in what later came to be known as the Peterloo massacre. He was later arrested and charged with holding an unlawful and seditious assembly. The resultant sentence saw him in Ilchester gaol for six months. In addition to Parliamentary reform, Hunt was involved in other issues that were particularly pertinent to working-class people, issues including child labour and the call for a ten-hour day. Hunt too was subject to censorship and his printed speeches often

³⁰ *Political Register*, No. 5, February 1, 1812, col. 129.

suffered at the hands of censorship legislation. Hunt was also opposed to the 1832 Reform act as it did not give the franchise to working-class men.

As the reform movement took hold, more and more men were prepared to risk fines or imprisonment for the sake of advocating a greater system of democracy. William Hone (1780-1843) was one such radical reformer. Hone was an auctioneer and bookseller who after his move into publishing in 1818 soon found himself at the mercy of the Attorney General for blasphemous libel. Much of Hone's publications involved parody, particularly aimed at the Royal family and the ministers of Government. Hackwood³¹ describes Hone's writing at this time as 'always topical and full of invention, and by a happier combination of caricature and satire, they oftener than not accomplished the particular purpose they aimed at [...].'³² In 1817 Hone published the pamphlet entitled *Hone's Weekly Commentary*, this short-lived periodical being replaced by the cheaper (two pence) *Reformer*; both publications lambasting the current political set up, and such diatribes were to get Hone and his supporters in trouble. The first incident that found Hone in trouble with the courts concerned an alleged insult to the Prince Regent. After the Prince's speech on the opening of Parliament in 1817, the Prince, on his way from Parliament found himself being attacked verbally and physically (stone throwing and other acts of civil disobedience). Hone reported the incident and argued that for the most part that there had been an overreaction by the Prince and his entourage. However, Hone did report on the ill feelings of public opinion towards the Prince Regent and he dared reflect that such public outrage was enough to ruffle the feathers of the Courts given that they were concerned to avoid further outbursts of public dissatisfaction. At this time of public unrest the Government did its utmost to hinder the development of ideas

³¹ F. W. Hackwood, *William Hone His Life and Times* (London: T. Fisher Unwin, 1912).

³² Hackwood, *William Hone*, p. 219.

and opinions that it viewed as seditious, or which sought to make political capital of civil unrest. In no time the government moved to pass measures such as the Seditious Meetings Bill, a Treasonable Practices Bill and the Army and Navy Seduction Bill. In 1817 these (and other similar) Bills were passed in the Habeas Corpus Suspension Act. It would now become much easier for the Government to hinder the reform movement, with prosecutions for criminal libels becoming easier to secure. Hone and his parodies were an ideal target. Although Hone was not part of any secret society or political club, the Attorney General found that by charging Hone with blasphemy with regard to his parodies of the Church, Hone's sedition could be kept in check and made an example of. Hackwood notes:

[Hone] was marked out for prosecution simply because it was possible to construe his 'parodies' as blasphemous [...] when charges of sedition failed to convict a man, a conviction for blasphemy had been secured from the most public spirited juries.³³

On May 3, 1817 William Hone was arrested and imprisoned on three separate charges of 'printing and publishing certain impious, profane and scandalous libels,' although Hackwood argues that the arrest was solely down to the biting satire against the ministers of government. In three trials Hone represented himself in Court and much of his defence rested on references to Church hypocrisy. Hone recited work of a similar nature to his own which had gone previously unpunished and was written by Church dignitaries. This line of defence lasted over three days and was meticulous in its construction and execution, and he was subsequently found not guilty on all charges. Hone's trials and subsequent acquittal can be seen as a pivotal event in free press law as there was no other instance after the trial of a prosecution being brought forward against a 'witty parody'. William Hone had found a method of attacking the

³³ Hackwood, *William Hone*, p. 122.

status quo which was safe from public prosecution.³⁴ Hackwood notes of Hone's trial that it 'must be regarded as a landmark in the history of the public press;'³⁵ if this is so, then so too must the trial of William Cobbett noted above.

The agitators above then represent political radicalism that sought, via arguments for a free press, to enlighten the working class so as to challenge the Old Regime of privilege and corruption. Thus in this sense, freedom of the press is instrumental in overcoming the Old Regime and part of a wider struggle for the franchise. Clearly, the arguments of the radicals and dissenters highlighted above provide arguments that are similar to those expressed by utilitarians and later by liberal commentators. Notably the fundamental stress on rationality, the search for truth and the assertion of public accountability in politics via a free press. However, though the accountability argument and the truth argument are being articulated in much the same way as the utilitarian and liberal arguments, a crucial difference is an emerging sense of class cohesion within socialist discussions of freedom of the press. The accountability and truth arguments are increasingly being articulated in the interests of the working classes themselves rather than a middle-class elite who act as guides or leaders for the poor. As we saw starkly in Chapter Four, similar arguments were used but with an overt paternalistic tone. Cobbett, Cartwright and Hone saw themselves not as leaders of the working classes as such, but as facilitators to their incorporation into the machinery of politics and political practice. What we have is an early assertion of working-class interests that seeks to highlight middle-class complicity in the torment of the working classes, the quote from *the Black Dwarf* No. 26, June 1821 cited above being a good example of this type of analysis. Though at this stage familiar arguments were employed, stressing accountability and the

³⁴ William Hone later published *The Three Trials of William Hone* in which he gave full account of the proceedings against him and his articulate and calculated defence.

³⁵ Hackwood, *William Hone*, p. 170.

assertion of truth, the emphasis of these arguments was increasingly focussed on the social whole, and particularly on working-class interests within this social whole. Thus within these early attempts at a broader more inclusive social analysis are starting to develop notions of class identity and class cohesion. These themes will reverberate more strongly in arguments later to be developed.

6.4: Free Speech as an End in Itself: Richard Carlile

Although as has been noted the struggle for a free press often went hand in hand with the struggle for Parliamentary reform, there are also examples of a free press being fought for as an end in itself, as a political ideal. One such tireless campaigner was Richard Carlile (1790-1843). Carlile, a journeyman tin-plate worker, suffered greatly as did many of the craftsmen and labourers in the early part of the nineteenth century. He was an avid reader and spent much of his money buying 'agitational' literature; inspired by these works he set himself the task of first circulating and then producing similar works. Before long, it became clear to Carlile that a free press was of utmost importance. He notes:

Having my attention drawn to politics, I began to read everything I could get my hands on with avidity, and I soon saw what was the importance of the Free Press. I had the same opinion of Mr Cobbett's two penny sheets, of Mr Hone's register, and indeed of all that was published in 1816. As well as to read I began to scribble, as I wanted to be doing something in the great cause as I saw it then. I was an enthusiast with the best intention and anxiety to do more good than I saw doing. Being fired with ardour by the political publications of the day, in the spring of 1817 I resolved to try my fortune at giving them a more extensive circulation.³⁶

One of the pamphlets that Carlile sought to give a greater audience was the *Republican*, later to be known as *Sherwin's Political Register*. This 'Painite'

³⁶ G. A. Aldred, *Richard Carlile, Agitator, His Life and Times* (Glasgow: Strickland Press, 1941). Sections reproduced in edited form from pages 52-55.

pamphlet was published by W.T. Sherwin. However, due to the increased risks of publishing such material, Sherwin decided that he would confine himself to printing alone and leave publication to someone else. Carlile was only too keen to oblige, taking up an offer from Sherwin on his shop and the publication of the *Republican*. He continues:

As the publisher of Mr Sherwin's *Political Register*, and as the person responsible for the publication, it was I who urged him on to that strength of writing and sometimes even violence which he subsequently assumed, and which I knew was calculated to keep up the other political writings to something near the standard. I may look upon myself as the author of all bold writing for it was the work of my responsibility, and he was always encouraged by me to go his full length under a pledge that I would never give him up as the author unless he wished it. This fearless responsibility on my part brought the *Gorgon* into existence, and evidently led to many other spirited publications.³⁷

Carlile's first taste of the libel laws was as a result of printing Hone's parodies, for which he served eighteen months in prison. Whilst in prison he amused himself by writing. On his release he published a satirical attack on the Anglican Communion Service.³⁸ However, Carlile's most celebrated conflict with the libel laws came as a result of publishing Thomas Paine's *Age of Reason* and Elihu Palmer's *Principles of Nature*. Previously these publications had been condemned as seditious and blasphemous; however, Carlile felt that it was his duty to republish these tracts in the hope of pressing forward his claim to absolute freedom of the press. It was no surprise to anyone when on January 12th 1819, the new Attorney General, Sir Robert Gifford, indicted Carlile for blasphemy following his publication of Paine and Palmer's works. If this was not enough,

³⁷ Aldred, *Richard Carlile*, p. 54.

³⁸ The title page read: 'The *Order for the Administration of the Loaves and Fishes; or, The Communion of Corruption's Host* [...]' 'Printed and Published by Richard Carlile, and sold by those who are not afraid of incurring the displeasure of His Majesty's Ministers, their Spies or Informers, or plunderers of any denomination.'

Carlile was also to be charged with sedition on account of his letters to the King and Prime Minister concerning the killing of eleven people at the Peterloo Massacre in Manchester.³⁹ Carlile was later released on bail. However, before the Court of the Kings Bench on 12 October 1819, Richard Carlile was charged with being a 'wicked, impious, and ill-disposed person, who had caused to be printed and published a scandalous and blasphemous libel of, and concerning, the Old Testament.'

The following trials, based upon three separate instructions, produced a clear statement of the Court's case against a free press, and, as usual, the reason for the vehemence of the prosecution reflected a deep unease by the establishment about dangerous publications and the effect of such material on the 'lower orders'. As Aldred notes:

The prosecution wished to protect the lower and illiterate classes of society from having their faith sapped and their minds diverted from those principles of morality which were so powerfully inculcated by the Christian religion. When such noxious productions were deliberately put into the hands of the ignorant, into the hands of those, who unlike the rich and powerful, were unable to draw distinctions between ingenious but mischievous arguments and divine truths, like vice, they become familiar to their minds, all respect and veneration for religion would diminish, and consequences too painful must ensue.⁴⁰

Carlile's defence was based upon convincing the jury that Paine's *Age of Reason* was not a blasphemous work as charged but a tract on 'human improvement'. In his defence, Carlile read passages from the *Age of Reason* to the jury, hoping to show them at first hand that the charges against him were ridiculous. Carlile then tried to read extracts from the Bible to substantiate Paine's assertions in the *Age*

³⁹ The rally was also addressed by Henry Hunt and attended by between 50, 000 and 60, 000 people.

⁴⁰ Aldred, *Richard Carlile*, p. 64.

of Reason. The Judges, the Attorney General and the jury denied Carlile this opportunity, arguing that Carlile would only attack and revile the Christian religion and this would cause great offence to many and ‘injure the minds of individuals’.

On his summing up of the first instruction against Carlile, Chief Justice Abbott noted that a man might, in accordance with the law, doubt or disbelieve in the divinity of the Christian religion. He might also communicate these beliefs to others so long as he did it ‘privately’ ‘silently’ and ‘respectfully’. However, by publishing opinions which openly attacked the ‘veracity’ of the Bible, it was clear that the defendant aimed at creating a breach of the peace.⁴¹ The jury found Carlile guilty. He was subsequently led from the dock and taken into custody. The next day Carlile appeared in court on account of the second instruction against him for publishing Palmer’s *Principles of Nature*; an indictment instigated by the Society for the Prevention of Vice.⁴² Again, Carlile was found guilty. On the fifth day of the trials, Carlile was brought into court and charged with publishing a seditious libel in Sherwin’s *Register*; however, the Attorney-General and the Chief Justice postponed the prosecution. The case was never called upon again. Richard Carlile was sentenced to two years imprisonment and a fine of £1,000 for publishing Paine’s *Age of Reason*, and one year imprisonment and a fine of £500 for publishing the *Principles of Nature*.

Although Carlile was an advocate of Parliamentary reform, the main focus of his energies were dedicated to a free press as a crucial component of human development. Unlike many of his contemporaries who saw a free press as being

⁴¹ Aldred, *Richard Carlile*, p. 72.

⁴² ‘The Society for the Suppression of Vice’ was founded in 1802. Its aim was to keep a watchful eye on blasphemous literature and encourage godliness and virtue throughout Britain. In its Annual Register the guardians of public morality, as they saw themselves, were keen to suppress any material which, whether lewd or not, could pose a threat to the moral, social and political fabric of Britain.

something to fight for as a method of gaining political representation, Carlile saw a free press as an end in itself. He notes: 'My whole and sole object, from first to last, of the time of putting off my leather apron, to this day, has been a Free Press and Free Discussion.'⁴³ When we examine Carlile's arguments we can see that his view of freedom of the press as an expression of the rational character of man and as a means to overcome oppression and corruption, echoes the sentiments of Paine. As he notes – 'correct principles require nothing but a clear and forcible statement to have them adopted and admired [...]'.⁴⁴ He continues:

The first object necessary to raise man from a degradation is to show him what he ought to be, and elevate his mind with useful knowledge and sound philosophical principles. This Paine saw, and no human being before or since has ever elevated the minds of mankind to so great an extent. No man can rise from reading the writings of Paine without feeling an additional importance, in his character of man, and as a member of society. Paine troubled not about inculcating respect and obedience to existing powers: the first object he taught man was to examine whether those powers were constituted and existing for the welfare of society at large; if not, to set earnestly about reconstituting them, not by any violence, but by temperate discussion and a dissemination of correct principles. To the best of my ability I have endeavoured to tread in the steps of that celebrated character.⁴⁵

Clearly we have a representation here of the accountability argument and the truth argument. Evident here is the combination of the two in the arguments of Carlile. The truth unveiled, society and mankind will be the better for it. On the surface, it seems that the socialist justification articulated by Carlile and that espoused later by classical liberals such as Mill are very similar. Similar in the sense that both stem from the Enlightenment belief in rational progress and both point to

⁴³ R. Carlile, cited Wickwar, *The Struggle for Freedom of the Press*, p. 75.

⁴⁴ R. Carlile, cited Wickwar, *The Struggle for Freedom of the Press*, p. 74.

⁴⁵ R. Carlile, cited Wickwar, *The Struggle for Freedom of the Press*, p. 74.

unfettered debate and openness as a means of obtaining greater understanding and truth of a given situation.

Though similar these arguments do diverge in one key area. The crucial difference between the approaches, is centred upon each position's underlying analysis of society. For Mill and for liberalism in general, the focal point of society is determined by the realm of the individual. Individuals' rights are inviolable, whether they be the right to gain profit from another's labour; the right to own property or the right to speak freely on whatever matter one chooses, and no authority has legitimacy over these rights.⁴⁶ Thus the right to free speech coupled with the truth argument within this context is connected to the rights of individuals as autonomous, free-thinking beings.

From a socialist perspective, however, even in the more immature representations (from the likes of Cobbett and Hone), the notion of individual rights is rejected as it succumbs to fundamentally divisive aspirations; whether they be the divide between the middle-class in their paternalist role as 'superior guide' for the working man, or the capitalist who sets himself apart from the worker within the context of capitalist production relations. For the liberal, the autonomous individual is posited as the central feature of the moral, political and economic analysis of society. In the case of developing nineteenth century radical socialist thought, (which is even more evident in later works), there is a clear understanding that the search for truth, through an unrestricted press is necessary for the great mass of people to come to terms with their existence and further their interests as a whole. The focus on the individual search for truth, is

⁴⁶ This list of liberal rights is obviously not comprehensive, nor should it be assumed that these rights are to be acted upon without some prior restraint i.e. these rights are acceptable only if they do not infringe upon another's equally valid rights.

surmounted by unified movement towards collective understanding. It is worth quoting the following passage from *The Red Republican* at length:

[W]e must not say I, but must say we. It must be understood that rights are only the results of accomplished duties, that the theory is a dead letter whenever we do not practically translate the principle in our every day acts [...]. Those who follow their individual susceptibilities, refuse the little sacrifice which organisation and discipline exact, deny, in virtue of the habitudes of the past, the collective faith they preach. Every man who pretends by the isolated labour of his intelligence, however powerful it may be, to discover to-day a definitive solution to the problems which agitate the masses, condemns himself to error by the incompleteness in renouncing one of the eternal sources of truth – the collective intuition of the people in action. The definitive solution is the secret of victory. Placed to-day under the influence of the medium we desire to transform, agitated in spite of all the instincts – by all the reactionary feelings of the combat between persecution and the spectacle of egoism given us by a factitious society built upon by material interests and mutilated in its most noble faculties, we can hardly seize what there is of most holy, most vast and most energetic in the soul of the Peoples. Drawn from the depth of our cabinets into the teaching of tradition – disinherited of the power which springs from the cry of actuality, from the I, the conscience of humanity, our systems cannot be, in great part, other than an atomising of corpses, discovering evil, analysing death, but powerless to comprehend life. Life is the people under emotion, it is the instinct of multitudes elevated to an exceptional power by the contact, the prophetic feeling of great things to do, by spontaneous, sudden electrical association in the public place; it is action exciting to the highest of all the facilities of hope, devotion, enthusiasm, and love which slumber now, and revealing man in the unity of his nature in the plenitude of his realising powers.⁴⁷

Not only though do we see an emphasis on accountability and truth as serving the interests of the social whole, we also see the importance of generating and developing a coherent critique of the prevailing political and economic system.

⁴⁷ *The Red Republican*. No. 12, Vol. 1, September 7th 1850.

Therefore, the use of the truth argument from a socialist position rests upon far more critical grounds for free speech than for liberals in that it is not based upon the 'supposed' rights of individuals, but the 'necessary' commitment, especially by the later socialists, to disentangle the complex, socially divisive and contradictory nature of capitalist production relations and offer the foundations of a more egalitarian, less socially divisive society. In an analysis taken further by Marx, the cult of individualism is transcended by de-mystifying commodity production relations and the real rational nature of mankind emerges. Importantly, unearthing of the 'truth' is not accomplished by theoretical positions that emphasises individual political action, but by social action and participation; the transmission of ideas into practice – praxis. I will discuss this aspect of socialist thought in greater detail below.

For now we can observe, particularly in the works of Carlile, a socialist argument for freedom of speech that takes on an overt rationalist tone with an emphasis on discussion and exchange of ideas leading towards a better understanding of how society could be organised for the masses. In Carlile's work there are also currents of the accountability argument, but the thrust of his arguments for freedom of speech seem to point to a belief in rationalism and the attainment of certain truths about the proper organisation of society. This absolute belief in liberty of the press for Carlile is, as it was for J. S. Mill some years later, a means of achieving a rationally grounded mechanism for generating knowledge about, in Carlile's case, the welfare of society as a whole. In expressing this focus on wider social inclusion and participation, indeed a sense of equal citizenship, that clearly emanates from Paine, we see Carlile re-articulating the truth argument in a way that is largely absent in Mill's arguments.

Carlile, even from his prison cell in Dorchester gaol, never ceased to be active in the name of liberty of the press and social and Parliamentary reform. E. P. Thompson sums up Carlile's radical character when he notes that 'unlike Cobbett and Wooler, who modified their tone to meet the Six Acts in the hope of living to fight another day (and who had lost circulation accordingly), Carlile hoisted the

black ensign of unqualified defiance and, like a pirate cock-boat, sailed straight into the combined fleets of State and Church.’⁴⁸

6.5: Holyoake, Hetherington and Harney, Radicalism Unfettered?

As noted, a key socialist agitator and propagandist of the nineteenth century was of course Robert Owen. Clearly, Owenite socialism was a strong current of working-class radicalism of the nineteenth century, and as previously highlighted, Owen himself was largely unconcerned with the movement for a free press. One political activist who was sympathetic to Owenite views, and who saw the struggle for a free press as being part of the struggle for working-class rights, was George Jacob Holyoake (1817-1906). Although many of the dissenters and propagandists mentioned in this chapter can be accredited with belonging to what might be termed a socialist tradition, few can be more firmly seated than George J. Holyoake.

Coming from a solid working-class background in Birmingham, Holyoake had both adroit abilities and intellectual prowess even at an early age. At the age of seventeen, he was introduced to the socialist ideas of Robert Owen and developed a sympathetic ear for Owenite socialism and co-operativism. Holyoake soon cultivated a reputation as a radical atheist and socialist, often contributing articles to the secularist journal *Oracle of Reason* which was edited by Charles Southwell. After the arrest of Southwell on charges of blasphemy in 1842, Holyoake became the journal’s new editor and not long after, he too was charged with blasphemy and ‘condemning Christianity’. He was sentenced to six months in prison. After his release Holyoake began the journal called *The Movement* which was replaced three years later by *The Reasoner*, espousing secularist and co-operativist views. Because of his radical views, Holyoake became associated

⁴⁸ Thompson, *The Making of the English Working Class*, p. 791.

with the likes of Carlile and Hetherington and as such was 'committed to the principle that all men should be allowed to express their views in whatever language they saw fit, being punished not by the law but by the contempt or indifference of the reading public.'⁴⁹ Although fighting the Owenite cause, Holyoake was not in full agreement with all of Robert Owen's views, was closely associated with the Chartist movement and, as such, was disillusioned with the 1832 Reform Act and in particular the 1834 Poor Law. Following on from Carlile, the Chartist movement saw the fight against censorship as an element of the struggle for working-class rights as a whole.

Another key agitator who is perceived to have taken forward the socialist agenda during the nineteenth century was Henry Hetherington, who with his editor Bronterre O'Brien produced the *Poor Man's Guardian* from 1831 to 1835. The *Poor Man's Guardian* was one of the chief organs of working-class radicalism in the 1830s. Avowedly anti-middle class, the radical *Poor Man's Guardian* developed an analysis that increasingly took into account the new political economy developed by middle-class radicals such as Ricardo, James Mill and McCulloch, and made popular by middle-class radicals like John Wade, Francis Place and Charles Knight.⁵⁰ Hollis notes that there were two radical periods of socialist agitation, from that stemming from the likes of Cobbett and Wooler writing in the earlier 1820s, to the more developed critical works of the likes of Holyoake, Hetherington and O'Brien in the 1840s. She notes that the first period was focussed mainly on Old Privilege and as such denounced the aristocracy and the church with a particular emphasis on taxation of the poor and an extension of the franchise. The second period was more sharply concerned with economic exploitation of the poor, though again with particular emphasis on further

⁴⁹ A. C. Marshall, *Lewd, Blasphemous & Obscene; Being the Trials and Tribulations of Sundry Founding Fathers of Today's Alternative Societies* (London: Hutchinson, 1972), p.131.

⁵⁰ See P. Hollis, *The Pauper Press*, Chapter VII.

extension of the franchise and an end to Parliamentary corruption. Moreover, this 'new analysis was compounded by the exploitation theories modified by other sources of social criticism, the attack on Old Corruption, land theft and competition; and it was stretched and shaped by debates with popularised political economy.'⁵¹

As such, the arguments for a free press that emanated from the likes of Hetherington echoed the sharper more focussed critique emerging from working-class sympathisers and agitators that went on to influence the Chartist movement later on in the 1840s. Indeed arguments for a free press gradually became subsumed within Chartism and it was left to a few key writers, including Holyoake,⁵² to continue the critique of censorship. In the first edition of *The Poor Man's Guardian*, Hetherington sets out clearly his defence of a free press, a defence that not only has within it strong working-class sympathies, but also a sharper sense of coherent *class* awareness:

Yes, we buckle on our armour of patience and perseverance – we draw forth our sword of reason, and we brave the whole host of tyranny! Defiance is our only remedy; - we cannot be slave in all: we submit to much – for it is impossible to be wholly consistent – but we will try, step by step, the power of RIGHT against MIGHT, and we will begin by protecting and upholding this grand bulwark and defence of all our rights – this key to all our liberties – THE FREEDOM OF THE PRESS – *the press, too, of the IGNORANT and the POOR!* we have taken upon ourselves its protection, and we will never abandon our post: we will *die* rather.⁵³

Clearly the emphasis on 'we' is strong and the notion of Hetherington writing as part of the working class and on behalf of the working class sets him apart from

⁵¹ Hollis, *The Pauper Press*, p. 220.

⁵² Holyoake and Hetherington both had some involvement in the setting up of the largely middle-class organisation the 'Association for the Repeal of the Taxes on Knowledge' which was effectively run by middle-class liberals and MP's. See chapter 5.

⁵³ *The Poor Man's Guardian*. No.1, July 9th 1831.

the likes of Place or Cobden and even Cobbett to some degree, who saw themselves as over and above the emergent working class.⁵⁴ In addition to the shaping of a class consciousness was a burgeoning economic analysis within the pages of *The Poor Man's Guardian*. Although relatively immature, some of the language is similar to that employed much later in the works of Marx. Indeed John Saville notes that O'Brien's contribution in particular had an affinity with the broader historical understanding of Marx and Engels:⁵⁵

Everywhere do we find hordes of lazy, dark-minded villains, devouring the fruits of industry, and ruling the population with ropes and bayonets. Every where do we find the foot of insolence upon the neck of virtue, and innocence craving mercy at the feet of guilt. There must be a cause for this. Such complicated wickedness could not exist without a cause. Yes fellow-country-men! there *is* a cause, and only one cause, but that a perfectly adequate cause. It is told in a word, and though it is almost death to name it, we shall tell it you, - IT IS "PROPERTY!"⁵⁶

Fools imagine that it is the government that makes itself what it is, when the real fact is that the government is only the creature of the usurious classes to protect them in their exorbitant profits, rents, and impositions on the labouring classes. The middle-classes, or profit men, are the real tyrants of the country. Disguise it as they may, they are the authors of our slavery, for without their connivance and secret support no tyranny could exist. Government is but a tool in their hands to execute their nefarious purposes.⁵⁷

The above passage goes on to note how the working class can impact on the 'profit-mongering' capitalists by way of 'mutual exchanges of labour for labour

⁵⁴ Examples of increasing class consciousness developed through class association was the formation of organisations like the 'London, Working Men's Association' formed by Hetherington and Lovett and later the 'London Democratic Association', formed by Harney, Davenport and Neesom.

⁵⁵ J. Saville, *The Red Republican and The Friend of the People* in Two Volumes. Introductory notes (London: Merlin Press, 1966), p. ii.

⁵⁶ *The Poor Man's Guardian*. No. 164, July 26th 1834.

⁵⁷ *The Poor Man's Guardian*. No. 126, November 2nd 1833.

on the co-operative principle.’ What is starting to emerge within this analysis is the idea of an alternative economic and social system which again influenced the Chartist movement.

In addition to the development of a sharper more focussed class consciousness and a critical economic analysis, we also have some insight into the mechanism for social change. Thus stemming from an increasing class awareness was the developing belief that the working classes themselves could be the agents of social change. Rarely was overt revolution and violent revolt explicitly called for in the pages of *The Poor Man's Guardian*, but there was, however, the assertion of the possibility that the working classes could bring pressure on the *status quo* through direct action – petitions, demonstrations, processions etc. Thus we see a strong sense of social solidarity and belonging to a broad social group. These are clearly important elements of a socialist vision, and we can see arguments for freedom of the press reflecting these beliefs.

Although *The Poor Man's Guardian* did not advocate violent insurrection, some pamphlets that have their intellectual roots in *The Poor Man's Guardian* did, one of which was edited by George Julian Harney⁵⁸ and entitled *The Red Republican* (the title was later changed to *The Friend of the People*). This publication provided a voice to the more extremist tendencies within the Chartist movement. *The Red Republican* and the *Friend of the People* provided a damning critique of capital and of middle-class reformers, who were perceived as apologists for capital with their ‘individualist’ theories of reform. Rather than stressing autonomy and individuality within which freedom would be expressed, such

⁵⁸ George Julian Harney (1817-1897) had, in his teens, worked as a shop boy with Hetherington and O'Brien on *The Poor Man's Guardian* and as such soon developed a keen interest in working-class politics, an interest that soon developed into active participation. See Saville, *The Red Republican*.

pamphlets stressed a wider social perspective and analysis, where the social whole was the focus of attention rather than the realm of the individual:

The modern bourgeoisie, the discoverers of the natural rights of men, have raved and are increasingly raving against feudalism, against serfdom and bondage. They call it the age of anarchy and oppression; yet they have commenced business with the stock which they accumulated under the wings of feudalism; they have extended that knowledge and industry which they acquired under its protection; they have abolished serfdom and bondage for their own aggrandisement, and have created a numerous *proletariat* – modern slaves – who have to get a scanty subsistence by working for wages.⁵⁹

Before we move on and for purposes of clarity, it is necessary to summarise the arguments present thus far in this chapter. We can observe that a justification for freedom of speech was emerging which started to differ in significant ways from the arguments discussed in the previous chapters. Initially we see that the accountability argument was evident in early working-class radical arguments from the likes of Cobbett and Cartwright, with however, a greater sense of inclusion and belonging. Carlile's emphasis on the social whole and the progression of society through greater understanding takes the earlier socialist arguments closer to Mill's assertion of individual fulfilment being attained through the search for truth. However, as we have seen, Carlile's arguments differ significantly from the later arguments developed by Mill, in that the emphasis on the social whole and of society moving forward in a state of solidarity that is increasingly class bound is in stark contrast to Mill's stress on individual autonomy. This is later emphasised to an even greater extent when one examines the work of Holyoake, Hetherington and Julian Harney, whose work starts to develop a stronger notion of class awareness and cohesion - the working classes acting in the interests of themselves. As such, arguments for freedom of speech

⁵⁹ *The Friend of the People*. No. 4, January 4th, 1851.

start to take on a radically different character from the arguments cited previously. The later arguments represented in this section offer us a critical denunciation of capitalist exploitation. An assertion of freedom of speech is being harnessed to undermine the arguments of middle-class elites, with equality and solidarity being highlighted as a key component of their analysis.

Though similar to the truth argument articulated by Mill, the key difference between the arguments of Mill and the arguments presented above, are that working-class radicals believed that the working classes themselves could progress towards a greater understanding of their condition and through this, they could become the chief organ of political change. Mill was far less confident about the working-classes' ability to progress towards the truth and thus adequately comprehend their plight and come to terms with the causes of their misery. This is one reason why Mill was largely not in favour of immediate representative democracy. He thought that it was perfectly reasonable for intellectuals, or those of higher intelligence, to have a greater say in public affairs and politics. Though Mill saw that everyone could eventually realise their full individual potential if social and economic conditions permitted, it was imperative that political power be balanced in favour of those who had the necessary expertise. This analysis lay in contrast to that in the pages of the *Red Republican*:

In demanding representative institutions, universal suffrage, freedom of the press, trial by jury, and the usual order of "Reforms," advocated by mere political agitators, the people of Continental Europe were ignorant of the all-important fact that such "reforms" are utterly valueless, unless associated with such social changes as will enable the *great body of the community* (my emphasis) to command the actual sovereignty of society. Political freedom is incompatible with social slavery.⁶⁰

⁶⁰ *The Red Republican*. No. 1, Vol.1, June 22nd 1850.

And following the summary from Robespierre's Report of the 18th Pluvoise:

We desire an order of things, in which all the mean and cruel passions shall be chained down, all the beneficent and generous passions awakened by the laws; in which ambition shall consist in the desire of meriting glory, and serving our country; in which distinctions shall spring from but from equality itself; in which the citizen shall be subject to the magistrate, the magistrate to the people, and the people to justice; in which the country shall ensure the prosperity of every individual, and in which each individual shall be elevated by the continual intercommunication of Republican sentiments, and by the wish to merit the esteem of a great people; in which all the arts shall flourish as the decorations of liberty that ennoble them; and in which commerce will be a source of public riches, and not the monstrous opulence of a few great houses only.⁶¹

Again it seems that the assertion of equality and a sense of fraternity and solidarity is a key feature of differentiation between the arguments from truth in Mill and in key sections of the working-class press. It is this sense of class dynamism, uniting a class in the interests of itself, with equal respect for all, whatever their mental capabilities and aspirations, that separates the truth argument from that of the working-class radical press, from that of Mill.

Hollis notes that the campaign to repeal the stamp taxes on newspapers between 1830 and 1836 is important in at least five ways. Firstly, it was another arena for the battle for popular education; secondly, it opened up the market to cheap literature; thirdly, it united, to some degree, working class and middle class radicals in that some of their aims and methods overlapped; fourthly and fifthly, the war of the unstamped had 'its own martyrs and heroes' which contributed to the development of a working-class critique of exploitation, poverty and government and as such went a long way in laying the seeds of a unified class consciousness. This assertion by Hollis provides a useful analysis of the role of

⁶¹ *The Red Republican*. No. 1, Vol.1, June 22nd 1850.

the unstamped press in developing a critique of capitalism and the Old Regime. What Hollis's examination shows us is that the later socialist analysis went a long way to advancing the repeal of the stamp taxes and made moves into changing the plight of the working class, through self recognition and self-awareness. Thus what we see are the makings of a *sufficiently* distinct set of arguments for freedom of speech. As we have seen, the stress on belonging to a social group, whose interests are shared, is crucial.

Having examined some of the arguments of working-class radicals during the nineteenth century, we can see the development of a set of arguments for freedom of speech that are changing character to those highlighted in previous chapters. To emphasise this further, I now turn to Marx's work on freedom of speech and freedom of the press, which stresses the components highlighted above to an even greater degree and with greater analytical sophistication. In doing this I will turn firstly to Marx's arguments in the *Rheinische Zeitung*.

6.6: Censorship, Oppression and Capital: Marx and Freedom of the Press

In short, Marx argued that free speech was essential to the spiritual and intellectual development of man. When the shackles of capitalist oppression were removed, man would be free to express himself and develop true to his species being. Marx's justification of free speech serves a dual purpose, firstly highlighting the oppressive nature of the state therefore being part of the mechanism for bringing about its destruction; secondly it is as an inherent ingredient to man's fulfilment in a rational, and in Marx's case, communist society. Though we see some parallels here to some of the arguments above, it is necessary to go further and explore in greater detail Marx's arguments for freedom of speech and freedom of the press.

In April 1842 Karl Marx began his journalistic career, writing for the 'liberal' *Rheinische Zeitung* newspaper. His work was of such a calibre that he progressed to editor only six months later. Much of his time, similarly to other young Hegelians, was spent severely criticising the oppressive nature of the Prussian

regime. After the death of Frederick Wilhelm III, there were hopes that a more sympathetic, less repressive monarch might make life easier for everyone, especially critical journalists. When the new monarch acceded to the throne, he did issue a new press instruction, one which surprised and pleased the majority of journalists with its leniency. The new instruction decreed that the official censors should be less rigorous in their prosecutions and more lenient when implementing existing laws.

Unlike many other journalists who saw that the latest Prussian censorship instruction was less severe than the previous one, Marx was not as easily pleased and saw that 'the new instruction, far from liberalising freedom of the press, simply add[ed] new chains'.⁶² In his first work as a revolutionary journalist, an article entitled *Comments on the Latest Prussian Censorship Instruction*,⁶³ Marx aimed to show the hypocrisy and orthodoxy of the newly revised and, as he saw it, even more strict press legislation. Although as McLellan⁶⁴ notes, Marx's writing at this time was highly eclectic and somewhat unsystematic, we can observe the formulation of a foundation on which Marx's justification for free speech and a free press was formed. Marx questioned whether the new instruction really advanced the freedom of the press; more likely it was an even clearer indication of the tightening grip of censorship.

As with all the arguments represented above, which express the spirit of enlightenment progress through critique, continued questioning was of course an

⁶² A. F. McGovern, 'Karl Marx First Political Writings: The Rheinische Zeitung, 1842-1843' in *Demythologising Marx* (Boston: College Chestnut Hill, 1969), p. 26.

⁶³ Marx, In *Marx and Engels Collected Works (MECW)*, Vol. 1, (London: Lawrence and Wishart, 1975), note 39, p. 738. This article was prompted by the new censorship instruction of Dec. 24, 1841. Originally intended for the *Deutsche Jahrbücher*, the article was subject to the new censorship restrictions. It eventually appeared in 1843 in Switzerland in *Anekdoten zur Neuesten Deutsche Philosophie und Publicistik*, a collection of works by 'oppositional' authors. However, selected excerpts were published in the *Mannheimer Abenzeitung* in 1843.

⁶⁴ D. McLellan, *Karl Marx Selected Writings* (Oxford: Oxford University Press, 1990), p. 17.

important component of human development. Marx at this stage of his intellectual development saw free speech and a free press as a necessary condition of self-examination and progression; press freedom was necessary if the press was to develop and improve itself. Moreover, and more in keeping with the socialist analysis, self-understanding through a free press was essential for the people as a whole to gain awareness of their predicament and come to terms with the nature of their existence. For Marx, a free press was 'the spiritual mirror in which a people can see itself, and self-examination is the first condition of wisdom'.⁶⁵ More than a mere characteristic of freedom, free speech in its own right was the means by which people could grasp their own destiny and further their own interests as a class:

The free press is a ubiquitous vigilant eye of the people's soul, the embodiment of a people's faith in itself, the eloquent link that connects the individual with the state and the world, the embodied culture that transforms material struggles into intellectual struggles [...].⁶⁶

This particular statement explicitly provides a primary justification for Marx's advocacy of a free press. There is more than a hint in this passage that Marx saw free and open criticism, the 'vigilant eye of the people', as necessary if the people are to improve their lot. Clearly here we have an extended version of the accountability argument, it is extended not only in terms of connecting the 'individual with the state' with a 'vigilant eye', but also turning that eye inwards towards themselves as a people. As such we see a more critically reflective accountability argument, one that not only projects its gaze on the state, but also towards the people themselves. This type of argument is crucial with regard to Marx's understanding of political action, in that only when the people truly come to realise their plight in totality, can they begin to make strides to change their

⁶⁵ K. Marx, 'Comments on the Latest Prussian Censorship Instruction', (*MECW*), Vol. 1, p. 165.

⁶⁶ Marx, 'Comments on the Latest Prussian Censorship Instruction', pp. 164-165.

predicament. Later works by Marx highlight this process much more clearly. By emphasising the effects of political economy, Marx is demonstrating the power of capital to mystify social reality. Through a thorough analysis which stresses dialectical historical insight Marx exposes the power of capital as a force of oppression.

For later socialists and Marx in particular, (and this represents a more sophisticated analysis than earlier socialists), capitalist commodity production by its very nature mystifies social relationships; relationships, which appear on the surface as freely chosen by *individuals* and equitable, are subsumed in the inverse logic of capitalist commodity production. These relations disguise the material relations between individuals and are thus self mystifying. The result is an alienated workforce which cannot grasp the reality of their situation. It is helpful again here to draw on the work of Marx:

Political economy hides the alienation in the essence of labour by not considering the immediate relationship between the worker (labour) and production. Labour produces works of wonder for the rich, but nakedness for the worker.⁶⁷

In the much later work *Capital*, Marx outlines the way in which commodity production is itself self mystifying:

Capitalist production is the first to develop the conditions of the labour process, both its objective and subjective ones, on a large scale - it tears them from the hands of the individual independent worker, but develops them as powers that control the individual worker and are alien to him. In this way capital becomes a highly mysterious thing.⁶⁸

⁶⁷ K. Marx, 'Economic and Philosophical Manuscripts' in McLellan, *Karl Marx Selected Writings*, pp. 79-80.

⁶⁸ K. Marx, *Capital Vol. 1* (London: Penguin Books, 1976 [1867]), p. 1056.

It is not, however, impossible for us to break through the barriers of mystified capitalist production relations and the effect these have upon society. Part of the answer in helping the working class do this depends upon working through the errors imposed upon us by commodity production. For socialism, free speech, via unrestricted criticism, is such a mechanism for helping to overcome the mystification of society and exposing the inherent contradictions of alienating capitalist production.

A re-articulated truth argument, based upon this premise, is a consummate mechanism which enables mankind to work through the inverse logic of capitalism and overcome its repression. Any restraint upon expression, whatever that expression might be, can halt debate and hinder the search for greater understanding of society's situation and so serves capitalist domination of mankind. It is clear that Marx and other radical agitators that belong to the socialist tradition were committed to free speech partly because it could help break down the mystified social relations of capital and serve to undermine these relations and help replace them with a more rational and just mode of production. Thus the instrumentality of free speech emerges again, but this time with a particular twist, free speech takes the form of both a means to an end as well as being a constitutive end in itself.⁶⁹ Even in the more immature socialist advocacy of free speech we can see that knowledge is necessary so as to provide the mirror in which 'the working man can see himself as the most useful and most important member of society, raising him in his own estimation [...].'⁷⁰

Thus we can discern a representation of Marx's understanding of the function of a free press with regard to political action. The free press is in itself political, as it

⁶⁹ In the conclusion of this chapter I speculate on the importance of freedom of speech within the socialist vision of the ideal society.

⁷⁰ Hollis, *The Pauper Press*, p. 20.

is an expression of political freedom, and it also promotes, in Marx's view, political awareness and activity among the population. This argument, in short, is a more reflective form of the accountability argument and the truth argument which as we have seen is also evident in later socialist arguments. However, this reflective component is far stronger in Marx as there is a more explicit sense of political dynamism in his arguments. In Marx's view, active engagement in political action was necessary to overcome the oppressive nature of the state, and this political action in part stems from the operation of freedom of speech. It stems from reflection and interpretation, and this was necessary for change. Famously in his *Theses on Feuerbach* Marx emphasises the importance of political activity. Criticising Feuerbach, Marx notes that: 'he does not grasp the significance of "revolutionary", of "practical-critical", activity.'⁷¹ He continues: 'philosophers have only interpreted the world, in various ways; the point is to change it.'⁷²

It is true that Marx eventually realised the limits of merely advocating free speech, whatever the motives that lie underneath this advocacy. Free speech was perceived as not the sole ingredient for social change. This is where the connection between philosophy, action and Marx's later, more scientific, analysis is most acute. In Marx's *Preface to a Critique of Political Economy* (1859), he argues:

At a certain stage of their development, the material productive forces of society come into conflict with existing relations of production, or - what is but a legal expression for the same thing - with the property relations within which they have been at work hitherto. From forms of development of the productive forces these relations turn into their fetters. Then begins an epoch of social

⁷¹ K. Marx, 'Thesis on Feuerbach', in D. McLellan, *Karl Marx, Selected Writings* (Oxford: Oxford University Press, 1990, [1845]), p. 156.

⁷² Marx, 'Thesis on Feuerbach', 158.

revolution. With the change of the economic foundations the immense superstructure is more or less rapidly transformed.⁷³

It is then according to Marx, the contradiction between social forces that is the pivotal parameter that undermines capitalist production relations. However, the notion of free speech plays an important role in the writings of the younger Marx with particular reference to notions of political understanding and its contribution to social change and praxis for the working class as a whole.

Thus we have an explicit connection between philosophy and political action, with freedom of speech playing a major part. The re-applied accountability argument is therefore infused with an assertion of radical political action and change.

This radicalism is stressed further when we examine Marx's view of democracy. Doveton argues that Marx also saw democracy as 'the essential means by which the working-class can express itself politically'.⁷⁴ Institutions based upon democratic principles would ultimately 'challenge social inequality and reinforce proletarian struggle.' Marx, in keeping with the socialist tradition, viewed the implementation of universal suffrage as part of man's move towards a truly rational state:

In democracy the constitution itself appears only as one determination, that is, the self determination of the people [...] In democracy the formal principle is at the same time the material principle. Only democracy, therefore, is the true unity of the general and the particular.⁷⁵

⁷³ K. Marx, 'Preface to A Critique of Political Economy' [1859]. McLellan, *Karl Marx Selected Writings*, p. 389.

⁷⁴ D. Doveton, 'Marx and Engels on Democracy'. *History of Political Thought*. Vol. XV. No. 4. Winter (1994) pp. 555-591.

⁷⁵ Doveton, 'Marx and Engels on Democracy', p. 559.

In later works too, Marx is clear that democratic forms of social and political organisation are the key to real freedom: 'Freedom consists in converting the state from an organ superimposed upon society into one completely subordinated to it [...].'⁷⁶ Here we can see a move away from a narrow view of democracy as a system of majority rule to a situation in which every person eligible is able to participate equally, with equal respect for individual dignity and choice. This more egalitarian conception of the accountability argument is a crucial feature of truly representative democracy, as we see emerging a conception of equal respect for opinion and choice; one of the key cornerstones of socialist political thought. As we saw with Berki's four 'tendencies' of socialism, the first tendency he highlights explicitly rests on notions of equality and a sense of equal respect for all.

Though we can see that Marx articulated a more sophisticated form of the accountability argument, which has its roots in a dialectical understanding of the nature of history, the themes represented above could be seen as re-articulations of the arguments of Hetherington and Harney. In order, however, to stress the sophistication of Marx's arguments for freedom of the press, and how these arguments take socialist arguments forward, we must examine further Marx's analysis of rationality and freedom.

6.7: Marx, Rationality, Freedom and Unfreedom

The arguments represented above go a long way in highlighting the shift in emphasis of the socialist arguments for freedom of the press. In highlighting Marx's contribution, we see this shift in emphasis even more clearly. However, by taking an even closer look at Marx's political philosophy, we are provided

⁷⁶ K. Marx, 'Critique of the Gotha Programme', in McLellan, *Karl Marx Selected Writings*, p. 564.

with further evidence of this shift. Indeed, we start to uncover the fundamental components of Marx's analysis, which shape his understanding of the nature of freedom and its contrary state. By gaining an understanding of Marx's concept of freedom, a clearer perception of the role and function of freedom of speech is provided.

Before we can get to grips with Marx's conception of freedom and its opposite, we must initially re-examine the basis on which these arguments are made, and to do this we return to the concept of rationality and its connection to what Marx terms 'species being', in essence - real freedom. As we have seen, Marx leans heavily on Enlightenment assertions about the progress of rationality for enhancing human existence. This emphasis on rationality is reinforced by Marx's claim that the essential characterisation of man is as a social being, acting rationally to further the interests of the social whole. This state of man's essential species being for Marx is the expression of real freedom, as it is freedom from want, exploitation and oppression and the freedom to create and develop. The natural state of man is to act socially and intellectually and universally:

Man is a species being [...] because he relates to himself as to the present, living species, in that he relates to himself as to a universal and therefore free being. [...] The whole character of a species, its generic character, is contained in its manner of vital activity, and free conscious activity, is the species characteristic of man.⁷⁷

Thus for Marx freedom is the essence of mankind as creative and intellectual being unbound by the constraints that commodity production and political economy engenders. This assertion is reinforced by the focus on rationality as a fundamental component of man's species being - as such Marx sees that

⁷⁷ K. Marx, 'Economic and Philosophical Manuscripts', in McLellan, *Karl Marx Selected Writings*, pp. 82-83.

unfreedom is connected to irrationality. We will now see how this hypothesis is incorporated into Marx's understanding of freedom and censorship.

In Marx's early articles in the *Rheinische Zeitung*, it is apparent that he is employing a critical rationalist analysis of the mechanism of the Prussian state. This critique, as Teeple⁷⁸ notes, 'was the method by which reason, in the person of the philosopher (in this case Marx), would confront the real world.'⁷⁹ What follows is 'the real world becoming philosophical, that is, rational, and philosophy becoming worldly.' Philosophy, or rationality, necessarily must impose itself upon the real world of existence and correct the defects of such a world. The crucial component within Marx is his understanding of the disjuncture between the real world of irrationality and the world of the rational. In order to place the irrational world in some context, the rational world must be highlighted. In Marx's writings we see that his conception of the 'real' state represents his conception of rationality; Marx's ideal is represented in abstract terms in the notion of the rational state. Again, it is helpful to quote Teeple at length:

As a concept, the state is seen as a whole, an organism, a community with a reality above and beyond the sum of its parts. It is only within this community that freedom can be realised; human nature being social nature, individuals only become human in relation to others, therefore freedom can have meaning only in the reflexive relation of the particular whole. Law, here, is to be understood as embodying the moral essence of rational principles of human behaviour, in short, the theoretical expression of freedom. And rationality is the state of affairs in which the interests of the whole are reflected in the individual and the interests of the individual are represented by the whole.⁸⁰

⁷⁸ G. Teeple, *Marx's Critique of Politics 1842-1847* (Cambridge: Cambridge University Press, 1984).

⁷⁹ Teeple, *Marx's Critique of Politics*, p. 29.

⁸⁰ Teeple, *Marx's Critique of Politics*, p. 30.

This real, rationally based nature of man for Marx is the essence of freedom, as it is based upon mankind's *real* social nature, and this real rational state is one which Marx set against the existing state, and formed the basis of his criticism of it. These criticisms were directed at various measures undertaken by the state whose aims were divergent from the real rational state which stems from the essence of the community. Articles such as *Debates on Freedom of the Press and Publication of the proceedings of the Assembly of the Estates*⁸¹ and *Debates on the Law on Thefts of Wood*⁸² as well as other articles throughout this period, show Marx highlighting the disjuncture between the rational state and the actually existing state. The conflict between rationality and irrationality – between real freedom and unfreedom - was keenly represented as the conflict between narrow private interests i.e. the interests of capital, and the wider interests of society and humanity. It was clear to Marx that the state acted solely in its own interests, which were of course unrepresentative of the interests of the people as a whole. This meant the state was acting 'unnaturally'; it was operating contrary to the real state, whose interests, by definition, are the interests of the whole.

In order that this position be corrected, and the state operate naturally in the interests of society, and to resolve this contradiction and generate a solution, an element should be introduced, which by its nature would counter private interests and convey the basis of true politics. This element would be a free press. A free press would not stand alone as a separate entity but would operate as a 'mediator between the divergent elements of existence and therefore be the means to bring reality into accord with its essence'.⁸³

[b]ecause they [the censors] want to regard freedom not as the natural gift of the universal sunlight of reason, but as the

⁸¹ In *MECW*, Vol. 1, pp. 131-181.

⁸² In *MECW*, Vol. 1, pp. 224-263.

⁸³ Teeple, *Marx's Critique of Politics*, p. 42.

supernatural gift of a specially favourable constellation of the stars, because they regard freedom as merely an *individual property* of certain persons and social estates, are in consequence compelled to include universal reason and universal freedom among the *bad ideas* and phantoms of "*logically constructed systems*".⁸⁴

It is clear that the basis of Marx's criticism of censorship lay in its irrationality in helping generate and then maintain the condition of unfreedom. Censorship represents only one interest in society: the interest of the state, which itself represents a minority of property-owning individuals, whose interests by their nature according to Marx, are at odds with those of the majority. Real freedom therefore is seen as rational, it is incompatible with illusory freedom in which men and women as individuals are perpetually in competition with one another:

From the standpoint of the idea, it is evident that freedom of the press has a justification quite different from that of censorship because it is itself an embodiment of the idea, an embodiment of freedom, a positive good, whereas censorship is an embodiment of unfreedom, the polemic of a world outlook of semblance against the world outlook of essence; it has a merely negative nature.⁸⁵

Marx went even further and saw the nature of censorship as something distinct in itself and worthy of examination. Censorship was perceived by Marx as almost a form of sickness, a sickness that 'pollutes itself and the people as a whole'. Censorship was also an expression of the dominating nature of the state acting for its own interests at the expense of the majority:

The government hears only its own voice, it knows that it hears its own voice, yet it harbours the illusion that it hears the voice of the people, and it demands that the people too should itself harbour this illusion. For its part therefore, the people sinks partly into political

⁸⁴ K. Marx, 'Debates on Freedom of the Press And Publication of the Proceedings of the Assembly of the Estates'. *Rheinische Zeitung*, No. 130, Supplement, May 10, 1842 (*MECW*), Vol. 1, p. 151.

⁸⁵ K. Marx, *Rheinische Zeitung*, No. 132, Supplement, May, 12, 1842, (*MECW*), Vol. 1, p. 158.

disbelief, or, completely turning away from political life becomes a rabble of private individuals.⁸⁶

Censorship then, attempts to justify its own existence in that it sees itself as protecting the public, while in reality it is protecting its own interests, those being the interests of capital and private property. Marx saw censorship as part and parcel of wider oppression, in the sense that it is an expression of unfreedom and an explicit one:

The censored press remains bad even when it turns out good products, for these products are good only insofar as they represent the free press within the censored press, and insofar as it is not in their character to be products of the censored press. The free press remains good even when it produces bad products, for the latter are deviations from the essential nature of the free press. A eunuch remains a bad human being even when he has a good voice. Nature remains good even when she produces monstrosities. The essence of the free press is the characterful, rational, moral essence of freedom. The character of the censored press is the characterless monster of unfreedom; it is a civilised monster, a perfumed abortion.⁸⁷

Marx was clearly attempting to show the irrational and contradictory nature of censorship and how it fitted in with the wider mechanisms of oppression. Marx viewed free speech, exemplified in a free press, as an actual expression of freedom which is fundamental to mankind's species being, and one that is essential if society and mankind is to develop and flourish to its fullest potential.

Clearly freedom of the press, as with other freedoms, is part and parcel of a particular conception of freedom and corresponding to this position is its opposite: unfreedom. There is certainly no shortage of debate on the particular

⁸⁶ K. Marx, 'Comments on the Latest Prussian Censorship Instruction', (*MECW*), Vol. 1, p. 167-168.

⁸⁷ K. Marx, *Rheinische Zeitung*, No. 132, Supplement, May, 12, 1842, (*MECW*), Vol. 1, p. 158.

nature of Marx's conception of freedom.⁸⁸ However, a clear understanding of Marx's theoretical underpinnings of freedom of speech may provide the basis for an improved awareness of Marx's view of freedom in general. By drawing attention to Marx's arguments regarding real freedom and unfreedom, I suggest that a whole new ontology of the liberty argument is being developed. As we have seen, Marx developed a thorough explication of rationality and its relation to freedom and connected it to his understanding of the pure essence of mankind as a species being which is rational, creative but above all social. Here we see Marx asserting notions of liberty that go far beyond the narrow individualism of liberal thought. Marx's notion of freedom here is the embodiment of rationality applied to all individuals, to all society, to all humanity.

In suggesting both a re-applied version of the accountability argument, and an articulation of the nature of freedom according to Marx, I am proposing that the Marxian justification of free speech, though having themes from the accountability arguments and of liberal notions of freedom within it, goes much further beyond its original parameters even than those that emanate from within the more radical socialist argument provided in previous sections. This is primarily apparent when we observe his emphasis on freedom and man's species being. Though I have identified examples of Marx's arguments for freedom of speech and placed them within the parameters of socialist arguments for freedom of speech during the nineteenth century, by examining Marx's arguments, we see a sharper analysis and one which makes freedom of speech as political praxis clearer and more dynamic.

⁸⁸ See S. Lukes, *Marxism and Morality* (Oxford: Clarendon Press, 1985); R. G. Peffer, *Marxism, Morality and Social Justice* (Oxford: Princeton University Press, 1990), and G. G. Brenkert, *Marx's Ethics of Freedom* (London: Routledge and Kegan Paul, 1983).

In emphasising this even sharper analysis, I am also highlighting to a greater degree the difference in character of socialist arguments for freedom of speech. This examination of Marx's arguments provides greater weight to my assertion at the end of the last section, that the stress on the social whole, equality, solidarity, and the critique of economics makes socialist arguments for freedom of speech sufficiently different in character to those arguments seen in previous chapters. Indeed, I suggest that what this exercise has shown is that the arguments differ sufficiently enough for us to consider whether it is worth asserting a new form or type of free speech argument.

From a socialist position, arguments for freedom of speech rest upon: a search for truth which is provided in part by an historical understanding of the mystified relations inherent in capitalist society; from this understanding some form of change would take place to a more rational mode of social organisation in which free speech would exist by the very nature of the then existing social relations. Within the context of rational socialist systems of organisation, the notion of equal participation and reward, equal respect for others' opinions resonates in many radical pamphlets. The virtues of true liberty, which is not compromised by narrow individualism, of equality which is shared by all, and of fraternity which sees humanity as one are asserted:

We believe in Liberty, without which all human responsibility vanishes. In Equality, without which all human liberty is only a deception. In Fraternity, without which liberty and equality would only be a means without end. In Association, without which fraternity would be an unrealisable programme.⁸⁹

6.8: Conclusion - A New Typology of Free Speech?

⁸⁹ *The Red Republican*. No. 12, Vol. 1, September 7th 1850.

Within the context of this chapter, it has been my intention to identify the components of nineteenth-century socialist arguments for freedom of speech, and examine examples of these arguments as political praxis. What we see at first glance is an articulation of the main types of arguments used by utilitarians and liberals. However, on closer inspection we can observe a number of elements within the arguments that impact on the nature of the arguments used. Indeed, I argue that the socialist arguments for freedom of speech *are* indeed sufficiently different from either liberal and/or utilitarian arguments; enough so, to assert a socialist typology of free speech in its own right. The arguments themselves, the accountability argument, the liberty argument and the truth argument are indeed to be found in the range of the socialist arguments for freedom of speech that we see in the nineteenth century and this is certainly no surprise as no argument exists in a pure form. However, the overwhelming shift in emphasis, from the narrow individualism of liberalism and the paternalism expressed in utilitarianism, to the stress of the social whole that is based on a belief in equality found in the socialist arguments for freedom of speech, is sufficient to change the character of the three types of argument in significant ways.

It is worth returning to Berki's four 'tendencies' of socialism so as to remind ourselves of the wider socialist vision from which the arguments set out above are derivative, and within which we can view the socialist arguments for freedom of speech. Firstly, Berki notes that an overarching emphasis on egalitarianism is prominent within socialism, with a commitment to equality particularly within the democratic process. As I have demonstrated throughout this chapter, the socialist political philosophy of free speech is closely associated with the struggle for representation and democracy, both practically and theoretically. We see this most starkly in the accountability argument, the overriding premise of such an argument from the socialist position is that government should be accountable to all sections of society at all times. In other words, there is a commitment to complete democracy where all sections of society, irrespective of wealth, intelligence or social standing, have an equal part to play in the operation of

government. As we saw with the utilitarians, the accountability argument in practice generally applied to an elite of educated persons, best suited to lead the masses as they saw fit. This is in stark contrast to even the early arguments for freedom of speech based on the accountability typology. Though accountability as a justification for free speech is necessary to both political creeds, and it works in much the same way, only the socialist argument, with its core value of egalitarianism, stresses that this accountability should be available to all.

Connected to the assertion of democracy as the ideal form of political organisation, is another tendency that Berki highlights – moralism. Again as has been seen, the arguments for freedom of the press, particularly in instrumental terms, rested upon a belief in the immorality of the aristocracy and the Old Regime. Less so with the later justifications but more evident with earlier examples, the moral weight placed on a free press was great, as the suffering caused by excessive taxation and lack of representation was a source of great misery for the poor. The free press would form part of the mechanism that would rectify this moral travesty.

Berki also notes overt rationalism in which we see the second type of argument to be seen in socialist justifications of freedom of speech. Such arguments rest on the Enlightenment belief that the search for truth should be unfettered and unrestrained. This truth argument too, I argue, is sufficiently different in theory and practice as to change the character of the argument. We have seen that the unfettered search for truth is one component necessary, especially for Marx, in disentangling the mystifying relations of capital. The truth argument here though is sufficiently different in that it is committed methodologically to a specific way of interpreting and explaining historical processes; and it is linked to a connected process of political action, class awareness and solidarity. The truth here is ascertained by more than mental prowess, but by historical understanding, class consciousness and political action. Freedom of speech is more than a search for truth, it is a mechanism within a larger mechanism which leads to a transcendence of ideology and false consciousness towards a better society. For

Marx especially, unless the historical processes are confronted by reason untainted by false consciousness, truth is an illusion. This type of truth argument, which is tightly bound up with history, class consciousness and political activity is not to be found in the arguments of liberals during the nineteenth century. As such, the great weight placed on the socialist emphasis on class and history brings forth a sufficiently different emphasis to the truth argument.

Finally we have libertarianism, a belief in absolute freedom from restraint in all spheres of activity. I have demonstrated that the socialist perception of freedom within socialist society is also sufficiently different to that of liberal conceptions with its emphasis on autonomy and individual liberty. The liberty argument within the context of socialism seeks to engender expression, fulfilment and a sense of solidarity. Freedom of expression and toleration are built into the socialist ontology and are therefore necessary components of an idealised socialist society. Unlike the liberal conception of liberty, for socialist radicals in the nineteenth century liberty for all is not compromised by the liberty of the few.

The three types of argument for freedom of speech then take on a sufficiently different character to the arguments we saw in Chapter One and articulated in Chapters Four and Five. With their stress on political, social and economic equality, with a wider conception of freedom, the socialist arguments for freedom of speech are both theoretically and practically dissimilar to those we have seen before. In examining and analysing the range of arguments for freedom of speech from what has been broadly termed the socialist tradition, I have isolated crucial tendencies and differences in emphasis and as such, I have completed my task. Though it has been the purpose to identify and explore socialist arguments for freedom of speech during the nineteenth century in this way, it is worth stressing that we may get an even broader understanding of the significance of these arguments if we speculate on how these arguments might look within the context of a real socialist society.

Obviously, if we were to look to the so-called socialist experiments during the twentieth century, we see that if anything freedom of speech is often actively discouraged and censored. But if, as I have suggested, freedom of speech is not only necessary to bring about a transformation of society, but a necessary component of the society thus transformed, we need to at least speculate on the nature and function of free speech within this actually existing egalitarian, socialist or communist society. In other words, what implications do the arguments for freedom of speech, highlighted above, have on a society that has been transformed from capitalism to socialism? Is there any need for freedom of speech within such a society? If so what are its limits?

Firstly, if we were to speculate on the political organisation of this socialist society, it is not beyond the realms of possibility to imagine a version of democratic participation and representation as the primary form of political organisation.⁹⁰ The socialist variant of the accountability argument indeed stresses this point, not only does it provide a mechanism for change, but also provides an operational component which is necessary to a democracy. Clearly the operation of democratic systems requires an informed electorate, with an accountable political machinery of government. Thus speculating on an idealised form of socialist society, which has freedom of speech within a system of popular rule based on the sentiments expressed above, is not too problematic. What clearly emerges within the texts of socialist radicals in the nineteenth century is a clear commitment to a society in which participation in politics and equal respect for all is possible; in short, a notion of equal citizenship and participation. In political terms then, the socialist variant of the accountability argument fits neatly into a transformed socialist system of political organisation with little difficulty.

⁹⁰I must note that it is beyond the scope of this work to identify the *exact* form of democratic political organisation to be found within our 'idealised' democratic socialist society.

The socialist justification of the truth argument also has an operational component inherent within socialist society. Clearly within the context of social organisation, the operation of society will be along the lines of the socialist vision of truth in political practice. False consciousness is eradicated and the truth about the real nature of man is revealed. The historically bound transition from capitalism to socialism (and eventually to communism) will be proved as an expression of truth. However, the operational validity of the truth argument is still a necessary component within our supposed socialist utopia. The search for truth or greater certainty in science and medicine would still presumably be necessary; as so too the search for a greater understanding in research and education. Here the Enlightenment belief in progress of knowledge is still pertinent, but is now bound up again with conceptions of citizenship and social solidarity.

If we now turn to look to the socialist argument based on notions of real freedom, i.e. the liberty argument, we are faced with a number of issues that impact on the foundations of such an argument and as such this aspect of the socialist argument is not as simple to deal with. This said, we do not have an insurmountable problem, only the need for further clarification.

As noted, the socialist conception of freedom, especially from Marx, has a particular conception of mankind. This is that mankind is truly free when he is operating within a productive social relationship with his fellow beings. This productive relationship is not based on any notion of oppression or exploitation but on a mutual understanding and respect for one's own kind. Thus to be human is to be social, and to be social is to be truly free. As Phillips asserts, 'socialists challenge individualism'; she goes on to note:

Socialists would never define their objectives solely in terms of liberty and equality: the finest liberty and most scrupulous equality

would still be inadequate if they left us isolated and alone. [...] A socialist society would be one in which we acknowledged and developed our common concerns; the movement to create such a society would be one of co-operation and solidarity.⁹¹

However, the limits of freedom within socialism are similarly bound by those constraints that exist within liberalism. Notably, freedom can only exist within parameters that do not conflict with the interests, in liberal terms the individual and in socialist terms, the interests of the social whole. In this sense the 'liberal is no worse off than the socialist',⁹² This said, it is within the context of socialist society, where mankind is perceived to be truly free, with equal respect of opinion and choice for all, we can see that arguments for freedom of speech could be subsumed within broader arguments for toleration. We can thus imagine that in an idealised socialist society, freedom of speech is but one component of a broader conception of toleration which is based on notions of equal citizenship and social solidarity, as Susan Mendus notes:

[...] socialists will justify toleration both as a way of promoting a sense of citizenship, and as a way of sustaining a sense of citizenship [...]. It is also the socialist desire to create a society where all can feel that they belong. [...] [The socialist] therefore sees toleration as practically necessary, but also as morally required in the construction of a complex sense of socialist unity.⁹³

In sum, we have a view of freedom of speech which is liberated from the constraints of liberalism and capitalism; restraints we see socialism attempting to overcome. These restraints include inequality, oppression and poverty. In this sense we have arguments for freedom of speech which in a sense are re-asserted

⁹¹ A. Phillips, 'Fraternity' in B. Pimlott, *Fabian Essays in Socialist Thought* (London: Heinemann, 1984), p. 231.

⁹² S. Mendus, *Toleration and the Limits of Liberalism* (London: Macmillan, 1989), p. 161. For a discussion on the limits of freedom within liberalism and socialism, see Mendus, *Toleration and the Limits of Liberalism* especially Chapter Six, and A. Gutmann, *Liberal Equality* (London: Cambridge University Press, 1980).

⁹³ S. Mendus, *Toleration and the Limits of Liberalism*, p. 160.

in such a way as to ensure that freedom of speech is not just the privilege of the few but also a component of a more rational, truly democratic and fulfilling free life.

Summary

The socialist justification of free speech took an evolutionary path through the nineteenth century. Initially claiming the right to the franchise, the argument developed into a radical critique of capitalist exploitation and of middle-class interests. From within the later arguments for freedom of speech emerged a stronger sense of class identification and a sharper analysis of the evils of capitalism. This class dimension - the demystification of production relations, coupled with a commitment to equality via common ownership - provides the socialist justification of freedom of speech with an instrumentalist and an operational force. The notion of equality and fraternity is pivotal to the socialist argument and as such changes the character of previous arguments for freedom of speech. In a sense the accountability argument, the truth argument and the liberty arguments are redefined within the context of the socialist analysis and liberated from their constraints as highlighted in previous chapters. What we have is a re-articulation of free speech from within a socialist programme of political change *and* its view of the ideal formation of society.

CHAPTER SEVEN

Conclusion

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Conclusion

- 7.1: Aim of the Thesis Restated
- 7.2: Key Arguments Summarised
- 7.3 Concluding Remarks

CHAPTER SEVEN

Conclusion

7.1: Aim of the Thesis Restated

It has been the purpose of this work to combine an analysis of theory and action in the study of arguments for freedom of speech and their application during the nineteenth century in Britain. In undertaking this work, I have sought to add to the literature on both freedom of speech, and nineteenth-century press history. I have demonstrated that in analysing the philosophical dynamics of arguments for freedom of speech, and exploring these ideas in political praxis, a fresh insight into nineteenth century political history and political philosophy is provided. The language of free speech here is largely articulated in middle-class appropriation of the public sphere within the context of overt calls for freedom of the press, via an end to taxes on knowledge. Such calls can only be adequately examined in the light of the changing political and economic dynamic of the nineteenth century. By asserting that the study of political ideas necessitates a close inspection of the texts – the linguistic artefacts, the historical circumstances – and the power dynamics of the society in question, as well as the theoretical foundations of ideas themselves, this thesis has provided a discussion of free speech during the nineteenth century which cuts across academic boundaries in that the relevant whole is studied rather than the particular.

7.2: Key Arguments Summarised

Within the context of this conclusion, it is worth summarising the main achievements of this thesis. Chapter One provided an important introduction to this work in highlighting the focus and methodology of the thesis. In methodological terms, borrowing from Habermas and aided by the work of Curran and Seaton, this work has sought to combine a structural and procedural analysis of the mechanisms of censorship, both official and unofficial, with a textually and contextually grounded exploration of political praxis. The official

components of censorship are highlighted with reference to press legislation and taxation. The unofficial components of censorship can be observed within the context of the middle-class fight for control of the press and an assertion of control over the so-called 'lower orders'. In addition to addressing some key definitional issues and reviewing relevant literature, Chapter One also outlined key theoretical arguments, or types of arguments for free speech, that would form the conceptual framework on which the main substantive chapters would be based. For clarity's sake, it is worth restating these three types of free speech argument.

Firstly I identified the political, or as I have termed it, the accountability argument. This argument is thus named as it is an argument for freedom of speech which at its core underpins representative democratic systems of social organisation. Such an argument asserts that governments should be held accountable by those whom they represent by public scrutiny of their decision making processes. However, as we saw, the epistemological basis of the accountability argument can differ. For example Thomas Paine's argument for accountability in democracy stems from a belief in the natural rights of man to have a say in the way he lives his life. For Bentham, as I have demonstrated, such a notion of natural rights is posited as 'nonsense on stilts'. For Bentham, democracy and accountability are sought after as they are the best political system for promoting utility, or the greatest happiness of the greatest number. After a discussion of the accountability argument, I moved on to discuss the liberty argument for freedom of speech. This type of argument is best summarised by noting that freedom of speech is a necessary expression of the 'natural rights' of man. From this position any restrictions on freedom of speech, are against man's natural rights, unless the free speech in question would mean that liberty of the individual was in imminent harm. The final orthodox type of freedom of speech argument outlined in Chapter One is the truth argument. Stemming from the Enlightenment belief in the search for knowledge and the belief in human progress, the truth argument is in essence based on a foundation of a belief in the

rational character of man. Freedom of speech in this context is necessary to ensure that progress through rationality is achievable for mankind. These orthodox types of argument thus outlined, we were better placed conceptually get to grips with the praxis of these arguments in Chapters Four, Five and Six. Finally, in this section of Chapter One, I raised the possibility of identifying a fourth typology of freedom of speech within the context of my discussion of socialist arguments for freedom of speech in Chapter Six.

The primary purpose of Chapter Two and Chapter Three was to provide a historical and contextual backdrop to the main substantive chapters of this thesis. In Chapter Two, I highlighted the historical character of arguments for freedom of speech, noting the rise of mechanisms of censorship from the Stationers' Company and the Star Chamber to the stamp tax. Moreover, the rise of arguments for freedom of conscience and toleration coincide with a new found belief in rationality and progress, a theme which reverberates throughout nineteenth century arguments for freedom of speech but are more developed and intricate, and bound explicitly to particular sectional interests. In a similar contextual vein, Chapter Three highlights the social, economic and cultural context of the nineteenth century, noting the specific historical conditions which impacted on nineteenth century arguments for freedom of speech. In particular we see the development of a strong middle-class elite and the drive towards industrialisation and capitalisation of the press, which severely undermined working-class organisations and which eventually gave rise to a strong middle-class elite.

Chapter Four explored the utilitarian arguments for freedom of speech. The chapter highlighted Bentham's conception of utility and outlined how his commitment to representative democracy underpinned his belief in freedom of speech. This was highlighted with reference to the accountability argument, which stressed freedom of speech as a necessary component of truly democratic systems of government. From an exploration of Bentham's view, I then examined the contributions to freedom of speech as provided by Bentham's so-called 'disciples'. Here we see a shift in emphasis in utilitarian arguments for freedom

of speech which I argue provide evidence of a drive to assert dominance over the working-classes. The accountability argument remains intact, but is tempered by a strong paternalist sentiment. In the arguments of the likes of James Mill, John Arthur Roebuck and Francis Place, we see a strong emphasis on the role and function of education in providing 'useful knowledge' to the masses. This 'useful knowledge' though posited as a means of escape from their miserable plight, was in fact intended to socialise the working class into a passive acceptance of *laissez-faire*. By arguing that the taxes on knowledge were the root cause of the sorry condition of the working classes, the utilitarian praxis of freedom of speech provided the means to shift the emphasis away from the market as the cause of their plight, and place a middle-class elite in a position of dominance. In the tracts of pamphlets and journals, I demonstrated the explicit paternalism of the utilitarian praxis of freedom of speech which placed the emergent middle class in a position of ideological dominance. Such an assertion of ideological dominance was evident within the utilitarian praxis of freedom of speech in its discussions about political economy, education and moral censorship. Indeed it was demonstrated how easily arguments for freedom of speech can be transformed into those of censorship, by focussing on the notion of the Panopticon and applying its formula to the moral character of man. It has been demonstrated that although utilitarian articulations of free speech theory are among the first to actively influence policy and provide a model of political participation, the paternalistic tone and the assertion of middle-class hegemony over both working-class interests and those of the landed gentry are bound together within the theory and praxis of freedom of speech, and as such, resonate with the particularist interests that were prominent at the end of the eighteenth century and well into the beginning of the nineteenth.

Chapter Five sought to explore the liberal praxis of freedom of speech. Here we saw half of the chapter devoted to John Stuart Mill's arguments, with the other half of the chapter concentrating on the arguments of the more mainstream liberals. After a brief discussion of the main tenets of liberalism, the chapter

moved on to analyse Mill's early newspaper articles which provided examples of his developing view on freedom of speech. From this, a brief outline of Mill's arguments in *On Liberty* was provided which highlighted Mill's strong commitment to free speech as a means to uncovering the truth *and* as a necessary component of individual human flourishing. Following this, we examined the implications of Mill's arguments in the light of some of his other works. I argued that Mill's stress on individuality and his commitment to *laissez-faire*, coupled with his distrust of socialism, had severe implications for his arguments in *On Liberty*. The problem is highlighted in the following question: how can people be free to express themselves to their full potential, if they are not truly free because of the economic constraints placed on them by the market system? Because Mill asserts the primacy of the individual above all else, and asserting that the market system is the best form of economic organisation, he is undermining any real commitment to freedom of speech, as the consequences of the market system impedes freedom for the great mass of people. Though Mill's arguments allow for freedom of speech for a small privileged minority, they are meaningless for the great mass of people in Mill's day. In Mill's argument, the liberty and truth arguments are brought together, only to be undermined by the consequences of the market system Mill supported. Having discussed Mill's arguments and their implications, I shifted my analysis to explore the mainstream liberal argument and praxis for freedom of speech in the nineteenth century. Here we saw examples of movements, primarily the Association for the Repeal of Taxes on Knowledge, and individuals – Richard Cobden, Collet D. Collet and John Bright, who articulated arguments for freedom of speech and freedom of the press primarily on commercial grounds. In highlighting and exploring these arguments, I asserted that a strong middle-class ascendancy was taking place which undermined working-class organisations by incorporating the language of the working-class radical press into their arguments but with an overriding emphasis on the virtues of the market as providing an answer to their problems. Similarly to that of utilitarianism, the paternalism inherent in mainstream liberal arguments for freedom of the press provided a means to break down organised labour whilst

at the same time attack government controls of the press. Thus after the end of the 'taxes on knowledge', the industrialisation of the press made it nearly impossible for a radical working-class press to exist as costs and prices soared. Thus the middle-class arguments for freedom of the press should not be separated from the middle-class interests that they sought to promote. Though the mainstream liberal arguments for freedom of speech have elements of the accountability argument, the truth argument and the liberty argument, these arguments in praxis allowed an enculturation process to take place which undermined working-class interests and asserted middle-class dominance. Finally, in this chapter I noted that the arguments from Mill and those from mainstream liberalism should be separated. The 'thin' free speech arguments provided by the liberals such as Cobden and Bright, are shallow and self serving in comparison to those of Mill.

The liberal perspective has demonstrated the vast difference in analysis of those who are representative of nineteenth-century liberalism. It is clear that John Stuart Mill is distinct in terms of level of analysis and scope from his 'liberal' contemporaries, many of whom, as we have seen, viewed Mill as a dangerous radical. However, Mill's unease at notions of community and equality raise difficulties in terms of his view of an idealised political community, and these difficulties of course, have implications for Mill's arguments for freedom of speech. The overt language of social control is clear in the social engineering sentiment of mainstream liberal arguments for freedom of speech. The force of enculturation of the so-called lower orders and the opening up of markets via the end of monopolisation of the newspaper trade buttress calls for an end to the ancient regime. Rather than opening up a world of discovery and potential for the mass of people, the middle-class argument for freedom of speech served to divide and quash working-class movements and assert a middle-class hegemony over the movement for a free press.

The final substantive chapter of this thesis focussed on socialist arguments for freedom of speech and their praxis in the nineteenth century. After a brief discussion of the parameters of the socialist sphere of analysis, I analysed the

work of early socialist agitators such as William Cobbett and William Hone. In analysing these arguments, we see a strong emphasis on democracy as a key demand for the working masses and thus a version of the accountability argument is demonstrated. However, even in these early examples, we observe an emerging emphasis placed on identifying the working classes acting in their interests as a class as a whole, which is distinct feature of early working-class radicalism at this time. After briefly looking at the work of Carlile, who sought freedom of speech almost as a right in itself, I explore the arguments provided by a more mature socialist analysis. These are to be found most resonantly in the works of George Jacob Holyoake, Henry Hetherington and Julian Harney. In their arguments for freedom of speech, these agitators demonstrate a much more critical analysis of the capitalist system, identifying the market as a key instrument of working-class oppression. Furthermore, in the pages of the *Red Republican* and the *Friend of the People*, we see a much more clearly defined notion of class and class cohesion. The arguments represented here are, on the surface, derivative of the main orthodox arguments for freedom of speech; however, I argue that in mixing with the distinct features of socialist political thought, we see these arguments taking on a new and sufficiently distinct character. This point is developed by my exploration of the work of Marx and his commitment to unmasking the contradictory nature of capitalism and asserting a more rational mode of social organisation. Attention is drawn also to the socialist conception of freedom which is most clearly developed in Marx's conception of man as a species being. This being that the essence of man is to be free, to be part of the social whole, to be productive and creative, but importantly man must also be free from want, oppression and exploitation. This essential characteristic of freedom implies a distinction between liberal notions of freedom, which stress individuality and competition amongst individuals, and the socialist emphasis on freedom for the entire mass of society, the social whole, which is not compromised or placed under threat by what socialists would term the narrow individualism of liberalism. In highlighting these relatively distinct elements of socialist arguments for freedom of speech, I am asserting that the socialist praxis of freedom of

speech during the nineteenth century could in fact be identified as a type of argument in its own right, as it is sufficiently different in its emphasis from the orthodox arguments. I will return to this point again in my concluding comments below. Finally in Chapter Six I speculated on the role and function of freedom of speech within the context of an idealised socialist society. Here I stressed the importance of democracy to the socialist vision and as such, freedom of speech is essential to the operation of this mode of social organisation. Furthermore, even though the truth about the real nature of man has been uncovered and is articulated in the existence of a true socialist society, the drive for greater understanding of, for example, the scientific and natural world, necessitates a continuing commitment to the free and open search for knowledge, which as we have seen is facilitated by freedom of speech. However, the actual limits of freedom of speech within socialist society provide us with a more difficult conceptual problem. In terms of defining the limits of freedom within our supposed socialist utopia, we are restricted by ontological claims in the same way as liberalism is constrained by its ontological foundation, namely, we must limit freedom only if it threatens or undermines the foundations of socialist belief systems; contra liberalism, which sees liberty being restricted only when individual freedom is threatened or undermined. Though we have a theoretical impasse, I assert finally in Chapter Six, that within the context of a pluralist, tolerant and democratic community, the needs of the culturally diverse do not need to become relations of domination over the social whole, rather I argue that the socialist free speech argument has a stronger rational, moral and ontological basis than the arguments which emanate from liberalism.

Although against the weight of a middle class seizure of the radical political space, working-class agitation still developed a sharp focussed critique of capitalist society which encompassed implicit and explicit political philosophies of free speech. The gradual maturing of the socialist critique is testament to the insight and determination of radicals such as Hetherington, Harney and Holyoake. The working-class assertion of free speech, in philosophical terms if not in

political terms, is powerful in that the emphasis on the social whole cancels out any tensions which emerge within even the more sophisticated liberal justifications which implicitly (in the case of Mill) and explicitly (in the case of mainstream liberalism) endorse levels of inequality within their 'ideal' systems thus restricting freedom. The Marxian dimension adds further to the socialist analysis in that it provides the means to demystify capitalist production relations; an analysis that socialists such as Harney were close to, but never articulated in such a sophisticated way.

7. 3: Concluding Remarks: Reasserting Modernity

The role and force of the radical newspaper and pamphlet as expressions of political praxis has been well emphasised within this work. Moreover, the ideas, the arguments and of course the political activity manifested within these works provide us with an understanding of the importance and power of political debate and argument expressed through these media during the nineteenth century. Although it is also clear that the ideas represented within such linguistic artefacts may not be as sophisticated as what we may call the classic texts (the contrast between the relatively unsophisticated arguments of Roebuck and the cultivated discourses of Bentham springs to mind), we can observe the role by which ideas permeated through political culture to force themselves on the political agenda. In Habermasian terms,¹ this we might describe as the assertion of some level of communicative rationality which was generated within the literature cited throughout this work. Such communication practices sought to develop and influence a massively changing social, political and economic landscape and the battle for the ascendancy was probably won by the middle class by the defeat of Chartism in the mid-nineteenth century. From then on, the power dynamic

¹ See Chapter One, Section Six.

eventually established by the middle class helped to maintain their hegemonic control over the influence and levels of debate for the rest of the century. The middle class hold on the forces which shaped the social, economic and political reality of Britain during the nineteenth century has been relatively unshakeable ever since.

The arguments analysed above, however, are not to be perceived as existing in a historical or cultural vacuum, and as such we see the orthodox arguments for freedom of speech overlapping and combining in political practice across the range of political perspectives. Moreover, even the assertion of a relatively distinct type of free speech argument, to be found in Chapter Six on Socialism and freedom of speech, must be seen in view of the fact that no political ideas are entirely distinct, or exist in a pure ontological form. The orthodox arguments for freedom of speech, after being infused with socialism, are altered in such a way as to create a sufficiently different type of argument. This example of ideas developing and transforming also emphasises the importance of the power of human intellect in shaping ideas as a means to progress through praxis. This is a significant point, as I suggest the socialist arguments for freedom of speech provide far stronger rational and moral justifications for freedom of speech; stronger arguments that might not have developed unless some sense of human agency and belief in rationality had been asserted.

Of primary importance to this study is to show ideas in practice, and as such, echoing Skinner,² I make the assertion that for political philosophy to have any impact on the way in which we view history, we must examine the context and articulation of these ideas in practice. This study has highlighted the role and function of ideas in political philosophy as providing the armoury of political

² See Chapter One, Section Six.

activity. Praxis, expressed in the radical literature above, is a feature of nineteenth-century political culture and this should be celebrated. This feature of nineteenth-century political culture is in stark contrast to the political culture of recent years, in that ideas and their connection to politics seem to be less a feature of modern political life. The faith asserted by nineteenth-century radicals, from all political perspectives, the faith in humanity itself to work through its contradictions and difficulties, is something that seems lost in the 'post-modernisation' of political discourse.

I believe this faith should be re-ignited. As we saw in the nineteenth-century it was this faith in human intellect and spirit that was asserted as a means of confronting despotism, injustice and oppression. It was this faith in human rationality that made politics meaningful, as ideas impacted on the real world of politics in such a way as to bring these ideas to life and help shape history. In doing so, rationality and humanity were affirmed as one. In this sense, political ideas were transformed into political action, the results of which helped shape and affirm a sense of humanity in those for whom political struggle was sometimes as important as matters of life and death; for some of course, it was more than that. In attempting to reclaim some sense of modernist agency, I am hoping to show in this thesis that historically at least, we were not all separate subjective agents, with identities that have no context or social power. The thesis is itself full of examples of ideas springing to life with a purpose and conviction that is now seemingly lost in our so-called post-modern times. Freedom of speech and the assertion of modernity seen during the nineteenth-century is just one such area which is an exemplar of the assertion of human rationality above all else. To quote Marshall Berman, in what might seem as timely encouragement for those of us who wish to reclaim belief in human agency:

[...] for all of us modernism is realism. This will not resolve the contradictions that pervade modern life; but it should help us understand them so that we can be clear and honest in facing and sorting out and working through the forces that make us what we are.^{3,4}

³ M. Berman, *All that is Solid Melts into Air* (London: Verso, 1999 [1982]), page 14.

⁴ I have asserted elsewhere similar concerns about post-modern analyses. See my chapter on nineteenth century political thought applied to contemporary pedagogy and technology in - 'Critical Reflections: Political Theory and Web Technology' in *Issues in Web Based Pedagogy*, edited by R. A. Cole (Westport, CT: Greenwood press, 2000).

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