Chapter 1

Freedom of speech in England and the anglophone world, 1500–1850

Jason Peacey, Robert G. Ingram and Alex W. Barber

Daniel Defoe was of two minds about freedom of speech. On the one hand, he reckoned that many had misused their liberty to express their views in print. It would, he lamented, 'be endless to examine the Liberty taken by the Men of Wit in the World, the loose they give themselves in Print, at Religion, at Government, at Scandal; the prodigious looseness of the Pen, in broaching new Opinions in Religion, as well as Politics, are real Scandals to the Nation, and well deserve a Regulation'.[1] The ideological cell-division catalysed by the Reformation had, by Defoe's day, made pluralism a fact of English life. And ideological battles first played out in print.[2] Yet Defoe also reckoned that government licensing of publications was itself inimical to liberty: 'I cannot see how the supervising, and passing all the Works of the Learned part of the World by one or a few men, and giving them an absolute Negative on the Press, can possibly be reconcil'd to the liberty of the English Nation'.[3] Print licensing was 'a Branch of Arbitrary Power in the Government'.[4] Moreover, Defoe insisted, that the English could express their views freely and openly had meant that the 'English Nation had always carried a figure equal to their Neighbours, as to all sorts of Learning, and in some very much superior'.[5] Freedom of speech and the allied freedom of the press, then, both encouraged learning amongst the English *and* potentially destabilised English society and politics. And though he disapproved of press regulation, Defoe's *Essay on the Regulation of the Press* (1704) none the less prioritised peace over liberty, and offered possible legal solutions that might ensure effective restraints on the promulgation of ideas which threatened the civil peace.[6]

Daniel Defoe, like most English men and women from the Reformation onwards, recognised that addressing freedom of speech meant dealing simultaneously with issues of liberty, pluralism, politics and restraint. This book about the early history of freedom of speech also highlights the connections between liberty, pluralism, politics and restraint. It covers the period

from the early sixteenth century to the mid-nineteenth century and treats that stretch of time as a coherent period, one which was not unvariegated but one in which there nonetheless existed a set of coherent practical and theoretical problems which animated the discussion and practice of free speech.

Freedom of speech is a topic that has long been an unapologetically Western liberal ideal. Those living in the English-speaking world are especially prone to be adherents of 'free speech fundamentalism'.[7] A number of reasons account for the Western liberal valorisation of freedom of speech. Firstly, the right to speak freely flows naturally from the anthropology of liberalism itself. The *individual*, as Larry Siedentop has argued, is 'the organizing social role in the West'; and *civil society* 'emerged, with its characteristic distinction between public and private spheres and its emphasis on the role of conscience and choice' from the primacy of the individual in the West.[8] *Liberalism*, in turn, is the Western ideology which most wholly prioritises the *individual*, conceiving of the individual as an autonomous self which reaches its fullest realisation through its ability to make unfettered choices.[9] It hardly surprises that Western liberals explicitly link the ability to speak freely with the full realisation of the individual self. Timothy Garton Ash recently defended free speech by saying that 'we need freedom of expression to realise our full individual humanity', and '[i]f we are prevented from exercising it freely, we cannot fully be ourselves'.[10] Other more obvious reasons have also recommended free speech as a Western virtue. Most notably, modern repressive regimes have been anti-liberal ones which have always stifled freedom of speech, even as they have often paid lip service to protecting free speech and the free press.[11] Nowhere was this more evident than in twentieth-century Communist regimes, so that, with Communism's fall in the late 1980s and early 1990s in the Soviet bloc, Western liberals could look with satisfaction at the apparent victory of their own cultural and political values.[12] Indeed, many interpreted Communism's collapse as a sign of the latent desire amongst all people for the democratic values championed by free Western societies.

Freedom of expression also lay at the heart of post-Second World War political projects. The *Universal Declaration of Human Rights* (*UDHR*) (1948) – inspired by Franklin Delano Roosevelt's proclamation of the 'four freedoms' – declared there to be a number of fundamental human rights, including freedom from slavery, freedom of movement within borders and freedom of conscience. Yet Article 19 – 'everyone shall have the right to hold opinions without interference … everyone shall have the right to freedom of expression' – undergirded the basic concepts of dignity, liberty, equality and brotherhood.[13] The *UDHR* reckoned that freedom of speech would buttress future democratic states, all of which struggled to recover from their catastrophic recent – and unfree – pasts. For the *UDHR*'s architects assumed that the document would be adopted by Western countries precisely because they inhabited a civilisation with long-held traditions of personal liberties and freedom.[14] That the countries which refused to adopt the *UDHR* – the Soviet

Union, Czechoslovakia, Poland, Yugoslavia, Ukraine, Belorussia, Saudi Arabia and South Africa – were totalitarian, theocratic or apartheid states only deepened the Western, liberal conviction that freedom of expression posed an existential threat to illiberal regimes.

However, the view that freedom of speech was both the prerequisite for and the bulwark of a stable liberal state has recently come under severe pressure on two broad fronts, one concerning religious expression – especially regarding Islam – and the other concerning hate speech. The response to Salman Rushdie's *Satanic Verses* (1988), which questioned the status of the Prophet Muhammad, exposed a crack in the liberal edifice of free speech fundamentalism.[15] In response to Ayatollah Khomeini's *fatwa* condemning Rushdie and his publishers to death for having committed blasphemy against Islam, many reacted angrily to attempts to banish Rushdie's book from the public sphere but reserved most ire for, in their view, tepid defenders of free speech.

The *Satanic Verses* affair traded on and destabilised the legacy of a commonplace version of the Enlightenment. Modernity – read most reductively as secular liberalism – is understood by many as a unitary version of public life in which all matters can be discussed freely *and* in which religion is banished from the public sphere.[16] The Rushdie affair called into question the supposedly inherent connection between free speech, secularism and political stability. Many liberal commentators reckoned that mobs demanding that Rushdie's book should be withdrawn directly challenged a home-grown English version of liberal progress. England, so it was claimed, was 'the home of freedom' and it was a full-frontal assault upon that memory to witness 'the burning of books and an openly homicidal witch-hunt'.[17] And yet, those on both the left and right who defended Rushdie and the absolute freedom of speech had to confront uncomfortable truths. Geoffrey Robertson's praise of the Home Office's decision to discontinue any further blasphemy prosecutions, for instance, reminded many that blasphemy remained illegal in Britain late into the twentieth century.[18]

This was just the start of the problem. The Rushdie affair, the *Jyllands-Posten* publications of 2005, the *Charlie Hebdo* murders in 2015 and the 2018 verdict of the European Court of Human Rights – which deemed certain criticisms of Muhammad to be blasphemous – have led many to ask whether the liberal model of public debate (secular) might be inadequate in today's hyperpluralistic world.[19] This inadequacy comes through most clearly in the European Court of Human Rights' ruling that it is blasphemous to accuse the Prophet of being a paedophile. On the one hand, the court affirmed that 'freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress'. On the other hand, it contended that the exercise of freedom of expression 'carries with it duties and responsibilities', which include 'the duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously

offensive to others and profane'. The reason these duties and responsibilities exist is to preserve the public peace: 'Where such expressions go beyond the limits of a critical denial of other people's religious beliefs and are likely to incite religious intolerance ... a State may legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures'.[20]

The European Court of Human Rights was not the first in the postwar era to insist that some things cannot be said publicly. Just as the Soviet Union had believed that the West used the *UDHR* deliberately to sanctify certain rights to make a partisan political point, so too did some Islamic countries and Muslim scholars object to what they believed was a system in which religious belief and human rights were made deliberately incompatible. The dispute between Islamic countries at the UN General Assembly about whether the *UDHR* should be adopted has never gone away. Instead, it has encouraged further debate and thinking about how the relationship between religion and public debate might best be constructed, culminating in the signing of the *Cairo Declaration on Human Rights* (1990) by the Organisation of Islamic Co-operation. Whilst the *Cairo Declaration* has largely been dismissed in the liberal West as being incompatible with human rights, its specific sections on freedom of opinion offer insights into the religious and ideological multivalence of *freedom of speech* in non-Western societies, beyond resorting to binaries of 'repression' and 'freedom'.[21] 'Information', the *Cairo Declaration* accepts, is 'a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of prophets, undermine moral and ethical values or disintegrate, corrupt or harm society, or weaken in faith'. This, in turn, means that 'everyone shall have the right to advocate what is wrong and evil according to the norms of Islamic Shari'ah'.[22] Faced with such claims, critics of Islam reiterated that freedom of speech is a primary value: it cannot be divided and it undergirds democracy.[23]

More recently, the primacy of the right of free speech among liberal values has come under attack by those who believe that legal protections need to be enacted to protect people from *hate speech*. Many have made the case that free speech protections should not extend to putative hate speech, but Jeremy Waldron's arguments are especially influential. On Waldron's reading there is 'a sort of public good of inclusiveness that our society sponsors and that it is committed to'. The problem with hateful speech, in Waldron's view, is that it 'undermines the public good, or it makes the task of sustaining it much more difficult than it would otherwise be'. Not protecting people who are the targets of hate speech fails to protect their *dignity* and 'social standing', 'the fundamentals of basic reputation that entitle them to be treated as equals in the ordinary operations of society'.[24] Moreover, not to punish hate speech threatens the peace and stability of any liberal society. Put another way, Waldron turns on its head the arguments of free speech fundamentalists: where free speech absolutists hold that liberal societies cannot subsist

without the untrammelled right to free expression, Waldron reckons that untrammelled free expression actually threatens the peace and stability of liberal societies. And Waldron, at least in part, justifies delimiting freedom of speech on Enlightenment grounds.[25]

Both those who valorise freedom of speech and those who now want to curb what they see as its excesses have thought about the subject not just in terms of the present but also historically. Thus far, it has been mostly political theorists, literary critics and legal scholars who have tried to excavate the histories of free speech, while historians have largely stood away from these investigations. In doing so, they have failed to grasp what might be called a new politics of discourse, and mostly concentrated either on understanding the effectiveness of censorship or on tracing freedom of speech as a distinct – almost elemental – category of political thinking.

Freedom of Speech, 1500–1850 brings together historians, political theorists and literary scholars of early modern England in one volume, to bring their different perspectives to bear on the very modern debate about free expression, particularly given that freedom of speech – or, more obviously, freedom of the press – first emerged in early modern England and its North American colonies. As such, this book revisits, and offers fresh perspectives on, this history, by exploring how contemporaries grappled with the issue from the sixteenth to the mid-nineteenth centuries. Such a *longue durée* approach is unusual for a volume of scholarly essays, but is particularly useful on this occasion for at least three reasons.[26] Firstly, it reflects the necessity of integrating religion into the history of free speech. Early debates about free speech were fundamentally debates about the freedom of *religious* speech. Secondly, from this period emerged texts – not least by John Milton and John Stuart Mill – which subsequently achieved canonical status in a putatively coherent tradition justifying unqualified free expression. Those texts and the moments from which they emerged, though, need to be properly contextualised in relation to contemporary ideas and practices, not least to recognise the complexity of the claims that were – and were not – being made. Finally, thinking about free speech between the sixteenth and nineteenth centuries points up the problems with the triumphalist – 'Whiggish' – accounts of free speech that undergird free speech fundamentalism.

Two variants of the triumphalist story – the one Macaulayan, the other Habermasian – stand out. The Macaulayan version traces back to Thomas Babington Macaulay's *History of England* (1848), in which the lapse of the Licensing Act was the axial moment in the history of free speech. Macaulay recognised that in 1695 the Licensing Act lapsed by accident, but argued that politicians and the public quickly embraced the free press, which became a permanent component of the English constitution. On Macaulay's reading, post-1695 politicians reckoned that the unhindered spread of information helped to create political and religious stability. Free speech soon became part of a series of accepted *rights*, including religious pluralism, toleration

and freedom of conscience. The wider public, eager to participate further in political life, also embraced the theories being advanced by government, and soon objected to all forms of censorship. By the middle of the eighteenth century, almost all English people believed that freedom of the press was an indivisible element of the English constitution based on rights theory. As Macaulay explained it, 'English literature was emancipated, and emancipated for ever, from the control of the government'.[27]

Macaulay's story has close affinities with Jürgen Habermas's more recent account, for Habermas too identified the late seventeenth century as a pivotal moment in the story of freedom of speech. Habermas anatomised the modern social space – separate from church and state – in which individuals could engage with one other and provided an account of its emergence. Before the late seventeenth century, there was a 'display oriented' public sphere; afterwards, there emerged a 'discourse oriented' bourgeois public sphere. In Habermas's story of the transformation of the old into the new public sphere the lapse of licensing, the entrenchment of parliamentary elections and the creation of the Bank of England provided the conditions in which people could discuss ideas publicly, freely and reasonably. That, in turn, created and empowered public opinion. Like Macaulay, Habermas argued that the Licensing Act's lapse heralded the 'elimination of the institution of censorship'.[28]

The initial Habermasian approach to the waxing importance of public opinion during the early eighteenth century obscured the tangled connection between religion and free speech, and Habermas's early take on religion has been characterised as 'antireligious'.[29] Historians have followed his lead in positing a causal connection between the emergence of a powerful public and a shift in how religion was defined and debated.[30] On this reading the public, not priests, became the authoritative judge of religion, and this, in turn, catalysed secularisation. Freedom of expression yielded freedom from religion. More recently, Habermas has changed his mind on the importance of religion to the early modern period.[31] For Habermas has recognised that religious believers do not – and, crucially, did not – accept the totalising claims to authority made by the modern secular state, or the supposedly attendant necessity for the public sphere to be a *secularised* public sphere. He related this directly to modern free-speech debates: 'it is not permissible to challenge opinion- and will-formation by censoring speech or cutting it off from possible sources of meaning ... [T]he respect that secularised citizens owe their religious fellow-citizens also has an epistemic dimension.'[32] Most historians who remain committed to Habermasian public-sphere theory, however, have been reluctant to pursue the implications of Habermas's change of view. To do so requires reckoning with religion's role in the history of freedom of speech, and thinking about the primary venue in which public debates, religious or otherwise, got played out: print. So, while modern debates about the challenges surrounding freedom of speech have inspired this book, it most

substantively involves an engagement with prevailing Whiggish – whether Macaulayan or Habermasian – narratives about the history of press freedom in the early modern period.

The historiography on freedom of expression in the early modern period has involved two discrete modes of analysis. Firstly, scholars have examined press regulation and censorship, and analysed the latitude that authors, journalists and publishers possessed.[33] Secondly, they have analysed whether the 'print revolution' led to the emergence of a 'public sphere' of free and rational debate.[34] Far less attention has been paid to whether or not contemporaries developed ideas about – and justifications for – free expression. Historians have focused, in short, more on the *reality* of press restraint than on the *theory* of press freedom. We need especially to think carefully about both the *intention* and *power* of early modern governments.

At their heart, scholarly debates about print culture in early modern England have centred on detecting a 'struggle' over freedom of the press, and have yielded up overly polarised accounts that mask a remarkable degree of consensus.[35] The scholarship that has proved most contentious – by emphasising the 'tyranny' of early modern press regimes – was a product not just of the times in which it was written but also of scholars who were not historians. F.S. Siebert's *Freedom of the Press in England, 1476–1776* (1952), which appeared at the height of the Cold War and which drew explicit comparisons between the tyranny of early modern regimes and Eastern Bloc repression, was especially influential. Siebert was dean of Michigan State University's college of communication, and his 'presentist' book reflected an interest in the origins of the US Constitution and in modern jurisprudence. It emphasised not just repression and struggle but also change and development.[36] Equally 'presentist' was a Marxist historian like Christopher Hill, who compared the press policies of early modern England unfavourably with those of repressive modern regimes and who emphasised how the English revolution – temporarily – eased regulation.[37] Although such scholarship nowadays attracts attention for its worst elements, more recent literary scholars have likewise insisted that government 'repression' was 'systematic'.[38] Annabel Patterson's influential account of authorial practices under the shadow of the censor was predicated upon ideas about the 'repressive culture' of the early modern period and on the existence of 'pervasive' censorship.[39]

If these accounts are Whig and Marxist histories of free speech and the free press, it is also the case that these histories did the valuable work of trying to understand change over time. If their accounts were reductive it was because of their presuppositions about the more or less linear progress of history, especially regarding the freedoms valued in modern liberal societies. Whilst this book does not share their presuppositions, it does aim to chart change over time regarding both *freedom of speech* and *freedom of the press*. What emerges is a story of messy, non-linear, reversible developments across

the early modern period, particularly those involving motives and strategies that were not necessarily 'liberal'. Whilst there is certainly no consensus – and perhaps no really convincing evidence – that freedom of expression emerged in the 'long' early modern period in ways that fit with modern ideas, the chapters in this book illustrate that government practices changed dramatically over time, and that freedoms of both speech and the press emerged as contested but valued – and perhaps even normative – concepts by the eighteenth century's end.

Revisionist scholars first made clear the failings of both Whig and Marxist approaches to press freedom. They produced more rigorously contextualised accounts of the aims and effects of early modern policies, and of the nature – or indeed absence – of demands for greater press freedom.[40] For instance, they rethought institutions like High Commission and Star Chamber, which had previously been regarded as organs of state repression, and reconsidered well-known but unusual episodes, like the punishment of John Stubbes and the trials of William Prynne. They also reappraised contemporary comments that apparently signalled an intention to behave repressively, from James I's complaint about 'the itching in the tongues and pens of most men' to Shakespeare's reference to art being made 'tongue tied by authority'.[41]

The most systematic – and nuanced – revisionist case, particularly relating to the Elizabethan and Jacobean periods, was developed by Cyndia Susan Clegg, who argued that previous scholarship involved 'decontextualised facts, overgeneralisation and half-truths'.[42] Clegg's account clarifies four key elements of the revisionist case. Firstly, censorship was unsystematic and unpredictable, lax and inefficient, and usually involved specific issues like national security, as well as a 'pragmatic situational response to an extraordinary variety of particular events'. It could also be performative and function as political propaganda.[43] As such, censorship was a 'playing card in a complex political game', rather than a 'policy' or a 'strategic agenda'.[44] Because censorship was 'local' and 'multivocalic', we must explore the specific 'rationale' for individual incidents of censorship, and acknowledge the importance of 'varied and often contradictory and competing interests'.[45] Censorship, then, involved multiple actors with different agendas at different times. This meant that specific books received different treatments at different moments,[46] and that 'patronage, personalities, historical events and political conditions' determined a book's 'reception'.[47]

Secondly, revisionists reinterpreted the Stationers' Company's role in the book trade and distinguished between censorship and commercial regulation.[48] From the Tudor period onwards, one of London's trade guilds or livery companies implemented press policy. That body was not simply an instrument of state power, but also aimed to protect its members and its monopoly interests. Revisionists argued, therefore, that as much as anything pre-publication licensing – which was used for only a small proportion of

books – was a method for protecting the financial interests of stationers – as a form of copyright – rather than for ensuring that a book's content was thoroughly scrutinised. The official licence was a mark more of *privilege* than of *orthodoxy*.[49]

Thirdly, revisionist accounts questioned the intentions of the authorities, insisting, for instance, that the action taken against specific books tended to reflect concern about tone rather than substantive content; about their *manner* rather than their *matter*. So, the vigorous response to the Marprelate tracts and to those by Stubbes and Prynne is said to have reflected a reaction to the fiery style of such tracts, rather than determination to punish dissent.[50] Debora Shuger argued that historians need to recover the 'system of beliefs and values that made the regulation of language ... seem a good idea' and stressed that censorship related to persons rather than ideas. Early modern regimes, she insisted, sought to enforce 'civility rules'; and even occasional draconian attempts to constrain the press reflected 'deeply consensual norms' relating to charity, defamation, 'name-calling' and 'hate speech'. The problem, on this account, was 'licentiousness'.[51]

Finally, revisionist scholars denied that the period witnessed a 'struggle' for press freedom, and insisted that contemporaries lacked a principled conception of the value of free expression. Thus, while it might be possible to identify complaints about censorship before 1640, these involved people who claimed freedom to express their *own* ideas and opinions, rather than to a *general* freedom of expression. Moreover, they often involved the demand to be able to engage in fairly restrained kinds of religious *disputation*, rather than in unfettered political *debate*.[52] As such, revisionists insisted that those who defended themselves in the face of censorship tended to insist that their views ought to be heard because they were 'true', not because freedom was inherently desirable.[53]

Revisionism's impact has been considerable and mostly salutary. It is no longer credible to argue that censorship was monolithic or systematic, and we now know that censorship could be ineffective, not least because censored books became much more popular.[54] Nevertheless, there remains considerable scope to critique revisionist claims, and post-revisionists have certainly done so. They have argued that revisionists dispatched a straw man, since even Whiggish and Marxist scholars recognised that censorship was neither entirely efficient nor effective, and that there had always been underground presses which printed and distributed illicit texts. Beyond this, revisionists were wrong to suggest that censorship was *merely* a matter of tone rather than substance: whether or not their policies were effective, Henry VIII sought a 'purge' of 'pernicious doctrine'; Elizabeth I tried to silence radical forms of unsound doctrine; and James I targeted 'apostacies', 'heresies' and 'great errors'.[55]

Moreover, as Anthony Milton argued, the 'obsession with proving or

denying' censorship is a 'red herring'. While uncertainty about what might be censored may have created suspicion and dampened discussion and debate in print,[56] Milton's approach involved conceding that there was more going on than simply a 'struggle' between the government and an 'opposition'. Licensing and censorship involved fragmented authority and competing interests, but the result was that some opinions were silenced and that print became a less available option for some people. So long as works were moulded and shaped by authority, even if they were not suppressed, then official licences were simultaneously marks of respectability and demarcations of acceptable terrain for debate. Indeed, even if this terrain may have been capacious, and even if the boundaries of acceptable discourse may have been contested and subject to change, restraints still existed and were far from neutral. It remained perilous to print texts that were beyond the pale. Most now accept that 'censorship' was 'less a matter of silencing authors or ideas than an instrument for defining, policing and negotiating what counted as orthodoxy'.[57]

Put simply, censorship was an everyday fact of life, and something that could involve pre-publication licensing, post-publication punishment and the use of royal proclamations and prerogative power. While contemporaries did not consider regulation to be inherently problematic its effects were real. While there was scope to express dissenting views, regulation was a powerful reality, and authors felt compelled to navigate controls in a variety of ways, including employing manuscripts, overseas presses and underground networks.[58]

Moreover, whilst post-revisionists insist that the decades before the English Civil Wars were less consensual than revisionists claimed, and that press regulation was a more or less significant phenomenon, they also stress the need to recognise change over time. Firstly, post-revisionists encourage us to think afresh about the rise of printed news. News was a promiscuous and popular commodity, and the governments of James I and Charles I paid particularly close attention to 'current affairs' printing from the early 1620s onwards.[59] Whilst regulation of the news reflected a conventional concern with the discussion of foreign policy, comments about the 'licentious' nature of print culture also reflected nervousness about tone, manner and style. There reached a point in the early seventeenth century when print discussion of 'matters of state' became intrinsically problematic. Moreover, the government sought to control print's likely *audience*, fearing that news texts would reach the 'foolish vulgar'.[60] It may be in this respect, and only in this respect, that Tudor and early Stuart governments were concerned about *printing*, rather than about the availability of texts *per se*. Their aim, in other words, may not have been to silence all forms of discourse and criticism, or even to proscribe certain kinds of material, but rather to ensure that certain things – irrespective of their tone and substance – were not *readily* available in print and for an indiscriminate audience.[61]

Secondly, post-revisionists alerted us to the ways in which Charles I and Archbishop Laud were responsible for a new and distinctive approach to print culture, not least regarding religious debate. This involved using High Commission and Star Chamber in innovative ways. Thus, whilst Prynne may indeed have been prosecuted for sedition over *Historiomastix, interpretations* of sedition, and of how it could be proved, were being tightened.[62] Demonstrating that new parameters for printing emerged under Laud and Charles has involved highlighting clear patterns regarding works that did and did not face official sanction. Before the late 1620s, the licensing of texts by episcopal chaplains was not *necessarily* censorious and could involve 'benign' interventions to prevent Puritan works getting into print. Over time authors and publishers could still 'shop around' to find lenient licensers, but this itself indicated that authors increasingly felt constrained by the licensing system.[63] Thus, while it is wrong to suggest that Laudian press policy was supremely *effective*, evidence abounds of a more concerted official attempt to suppress unacceptable views; of favour being shown towards a new kind of conformity; of the deliberate and one-sided dampening of debate; and even of greater tolerance for Catholic texts.[64] As such, whilst it is undoubtedly correct to point out that one of the most severe cases of 'ideological censorship' of the early Stuart period actually involved *Parliament* taking action against an Arminian (Richard Montagu) rather than the *Crown* moving against Puritans, the broader context involved heightened religious tension and the development of what became the Laudian press policy in *response* to Montagu's treatment.[65] Afterwards, texts that had once been acceptable became subject to restraint.[66] Puritans increasingly *sensed* that the Laudian licensing system was stacked against them, and reacted accordingly, and this made it more likely that religious debates would spill out into print; ensured that more concerted efforts were made to 'stir up' popular support with aggressive polemics; and led some authors to turn to European presses to get their works into print. As such, it is possible to accept that the late 1630s 'show trials' – of men like Burton, Bastwick, Prynne and Lilburne – were anomalous, while also recognising that they made things worse.[67]

During Charles I's reign, licensing came under attack, so that censorship – and free speech – became matters of debate, whether on principled or pragmatic grounds.[68] Ben Jonson claimed that 'the punishment of wit doth make [its] authority increase', while Thomas Scott argued that censorship encouraged defiance, 'for ... if one pen, or tongue be commanded to silence, they will occasion and set ten at liberty to write and speak'. Writing, Scott claimed, was like grass, in that 'the more it is depressed, the thicker it will spread and grow'.[69] Francis Bacon agreed, noting that while 'libels and licentious discourses against the state' were 'signs of trouble', suppression was not necessarily a remedy, 'for the despising of them many times checks them best, and the going about to stop them doth but make a wonder long-lived'.[70]

Scholars have challenged the notion that contemporaries lacked ideas about free speech and have demonstrated that free speech was indeed conceptualised and validated, in certain settings for certain people who behaved in certain ways. David Colclough highlighted the importance that some contemporaries attached to *parrhesia* – frank or justified speech – as a mode of political counsel, tracing the ancient lineage of such ideas; highlighting claims about the wisdom of the 'plain' or common person; and recovering the value that was attached to the active, informed and truth-telling citizen, not least at moments of crisis. Occasionally, such notions involved ideas about the compulsion to speak out, and about the value of prophet-like counsellors, as with the poet-pamphleteer George Wither, who styled himself England's 'remembrancer', or Thomas Scott, *Vox Populi*'s author.[71]

It is upon such foundations that this volume makes notable contributions. Joanne Paul (Chapter 2) develops different dimensions of contemporary ideas about *parrhesia*, not least the sense that free or frank speech was regarded less as a right than as a *duty*. The work of Thomas Elyot clearly highlights a fundamental difference between early modern and modern conceptualisations of free speech and demonstrates that *freedom* was not necessarily regarded as *restraint*'s opposite, not least in the sense that it was considered possible to be liberated by speaking out, irrespective of the consequences. These themes of restraint and the duty of free speech are also picked up by Karl Gunther (Chapter 3), and in ways that complicate matters. Gunther shows that restraint – including, crucially, self-restraint – was practised and valued even by those who accepted that free speech might be a duty. As Gunther shows, restraint was not something that was imposed upon authors by the authorities, but rather something that could be self-imposed, as part of a process of reflecting on audiences and contexts and of seeking to avoid harm, offence or indeed violence. Peter Lake (Chapter 4), meanwhile, develops ideas about the importance that was placed upon *counsel*, by highlighting the non-theoretical and not necessarily oppositional ways in which moments of crisis from the late sixteenth century to the Spanish Match in the 1620s generated *outbreaks* of free speech. These involved commentators from both within and beyond the political establishment, some of whom sought 'popularity', while others deployed a rhetoric of emergency to justify the promiscuous use of printed and scribal texts, including libels. All of these early modern authors, Lake argues, made appeals to various kinds of 'public', and it was such tactics – and at least tacit claims to free speech – that provided the context and pretext for the kinds of heightened restraint that marked the early Stuart period.[72]

Central to Colclough's account of free speech was Parliament. Parliament has long been recognised as being central to the history of free speech, even if only in terms of the privilege (and perhaps *right*) for MPs to speak freely at Westminster. Whig historians, for instance, detected tension with the Crown over how – and on what issues – such freedoms could be used. They also noted that such claims provoked resistance from monarchs like

James I, in terms of the need to avoid 'licentiousness', and to decide who would be responsible for maintaining decorum. In such tussles, of course, it becomes clear that contemporary fears about licentiousness – the *manner* of discourse – proved hard to separate from questions about the substance, or *matter* of, debate.[73] Colclough also claimed that the Commons broadened its remit and came to associate its own freedoms with the 'liberties of the subject'. He argued, furthermore, that parliamentary free speech shaped how people engaged in political debate beyond Westminster, not least through the circulation of news and scribal documents.[74] David Como (Chapter 5) demonstrates in other ways how parliamentary culture shaped public debate. This involved claims that presses should be free 'in time of parliament', largely because *Parliament* could take action against anyone who behaved indecorously: free speech implied neither absence of control nor licentiousness. For the pre-war period, then, the chapters in this volume significantly enhance our appreciation of how contemporaries conceptualised free speech; how they did so in a variety of ways that were not necessarily 'modern'; and how *change* occurred within political culture regarding free expression.

Recognising the need to acknowledge and explain change is a particular strength of post-revisionist scholarship. None the less, problematic notions about a 'collapse' of censorship, like the 'explosion' of cheap print which seems to have been its effect, remain commonplaces of scholarship on the 1640s and 1650s. In fact, there is plentiful evidence that attempts to reimpose press control emerged almost immediately after the outbreak of civil war, with demands that printed texts should contain the names of authors and publishers (so that post-publication punishments could be imposed), with the passage of new legislation, and with the appointment of new licensers.[75] To be sure, the period witnessed unprecedented possibilities for printing novel and unorthodox opinions.[76] Yet many at the time decried the new situation as anarchic, bemoaned the instability of the print medium and demanded new forms of restraint.[77] Seditious texts could still be censored and their authors and printers punished, and if the pre-civil-war period can no longer be described as one of 'pervasive' censorship, then neither were the revolutionary decades devoid of press control. This was very obviously true in terms of the news press, where government control eventually – if briefly – became total.[78]

The upheavals and experiences of the mid-seventeenth century had a lasting effect. Press culture and press regulation were transformed during the mid-century. Firstly, the period after 1641 involved a qualitative shift towards more ephemeral kinds of print, aimed at an increasingly broad audience, and, although the 'explosion' of titles, if not printing, was not universally admired, it was hard to reverse. Secondly, the experience of the Civil Wars made it clear that licensing was a political tool. The licensers appointed after 1643 contributed to the existing sense that licensing was a

discredited method for regulating the press, and it became much harder to use an official licence as a marker of authenticity or orthodoxy. Thirdly, the parliamentarian and commonwealth regimes experimented with methods of press regulation that deployed state officials – not the Stationers' Company – to enforce laws.[79] Fourthly, the practice of civil war and interregnum governments involved *monitoring* the press: they mostly gathered information on journalists, printers and publishers to censure – as much as punish – them. This represented a fairly novel approach to press regulation, which involved the *policing* and perhaps *harassing* of the press, as much as it did *controlling* it.

Novel arguments regarding press freedom accompanied the new press policies, although any engagement with the ideas that emerged from the 1640s must involve great care, lest scholars find proto-liberalism in texts like Milton's *Areopagitica*.[80] Neither Milton nor his contemporaries offered a 'rights'-based approach to press freedom, and few were prepared to grant such freedom to Catholics. Indeed, opponents of Caroline press policy called for fairly strict press controls in the 1650s, while Milton not only disparaged the capacities of the 'vulgar sort' but also wrote of the need to 'clip' Presbyterians 'as close as Marginal Prynne's ears', and then served as a press licenser during the republic. Like other contemporaries, Milton was more animated by *clerical* licensing, which privileged perspectives other than his own, than by oversight of the press *per se*.[81]

Nevertheless, taking such cautions on board should not mean overlooking the emergence of intriguing ideas in the 1640s. David Como has argued that the discourse around press controls during the 1640s involved 'ideological fragmentation and escalation', wherein defences of religious toleration touched on press freedom and were seen as part of a wider political programme. Thus, while a radical like William Walwyn accepted the need to suppress books that were 'scandalous or dangerous to the state', he nevertheless offered 'the closest thing to a defence of press freedom that civil war England had yet seen'. Central here was an unprecedented degree of support for *debate* as something that was *necessary*.[82] By January 1649, Levellers were prepared to argue that 'liberty' of the press was 'essential unto freedom' and that licensing always bred tyranny.[83] Another way of explaining what was happening here, as Como's chapter in this volume suggests, is that claims about presses being free 'in the time of parliament', which began to emerge in the 1620s, came to be expressed much more generally after 1640, to the point where they could be invoked at *any* time, to hold *all* forms of authority to account, and in ways that became intimately linked to constitutional reform. By the late 1640s free speech was justified even without Parliament acting as the arbiter of decorum, and as something that was essential to the prevention of political and constitutional corruption.

However, what the Levellers did not make explicit was that they were (mostly) opposed to pre-publication censorship rather than to all forms of control. When their vocal supporter Gilbert Mabbott decried the system of

licensing, he not only expressed opposition to *monopolies*, but also argued that 'it is lawful to print any book ... without licensing, so [long] as the authors and printers do subscribe their names thereunto, that so they may be liable to answer to the contents thereof'.[84] Like the Levellers, Mabbott was on the radical fringes of contemporary debates, but such commentators expressed a clear preference for post-publication punishment rather than pre-publication censorship, and considered this to be compatible with 'liberties' and 'freedom', even if they hinted at something more radical.

The mid-seventeenth century, in other words, witnessed messy experimentation but also new ways of thinking and acting, and the development of ideas that had begun to emerge before 1640 and that involved striking notions about press freedom. Important changes also took place after 1660, above and beyond the brief experiment with looser control that accompanied moves towards religious 'indulgence' in the early 1670s. Charles II's government declined to turn back the clock by reviving the prerogative courts, opting instead to achieve press control through legislation.[85] In addition, particularly close attention was paid to printed news, by means of a government monopoly, and Sir Roger L'Estrange, press overseer, was determined to control what was available to the 'unruly populace'. Indeed, for L'Estrange, the preoccupation with audience was perhaps as important as press restraint more generally, and he is notorious for complaining that cheap print – particularly news – 'makes the *multitude* too familiar with the actions and counsels of their superiors'.[86] Mark Knights, meanwhile, has argued that the later Stuart period witnessed profound nervousness about print culture, and that in a context of highly partisan politics there emerged a crisis of truth-telling.[87] Equally clear is that the shift towards a legislative approach to press regulation, involving acts that needed to be renewed periodically, created moments when control 'lapsed'. This occurred in 1679, during the Exclusion Crisis, leading to a 'flood' of print. Although judges declared that Charles II could prohibit newspapers and pamphlets using prerogative powers, renewed control proved difficult before 1685, to the point where Oxford University took matters into its own hands.[88] The late 1670s and early 1680s, therefore, were a period of mass Whig propaganda, of mass petitioning and of the 'outrageous liberty of the press', before some kind of order was restored with the 'Tory reaction'.[89] The years after the Glorious Revolution witnessed measures that were *intended* to make press regulation possible, more obviously than it did their effective implementation.[90]

As such, the story of the seventeenth century is not simply one in which it became harder to sustain effective press control, or in which control was patchy and erratic. Governments gradually demonstrated greater concern about audience, and about the news medium, as opposed to merely what ideas were available; regimes continued to be divided over the merits of relying upon the Stationers' Company; and faith in the value of pre-publication

censorship began to wane. Charles Blount – the most obvious heir to John Milton as an advocate of 'liberty of the press' – explicitly demanded an end to licensing, but *not* to the censuring of offensive texts.[91]

These developments provide the backdrop to the Licensing Act's 1695 lapse, a lapse which has generated bold historiographical claims. Paul Monod argued that censorship was 'buried' in 1695; that 'ideological control was no longer effective at the level of the educated elite'; and that 'political consciousness extended itself rapidly among the popular classes'. What resulted was 'compromise' rather than 'control': afterwards 'a less censored press' and 'greater tolerance of the press' became 'a necessary condition of party politics'.[92] John Feather likewise argued that England witnessed 'a degree of freedom unique in a major country in eighteenth century Europe', even if such freedom was 'hedged about' with various restrictions.[93] Such conclusions are at least partly endorsed by contributions to this volume. David Womersley (Chapter 6) notes the increasingly clear connection that contemporaries made between free-thinking and freedom of expression and that claims about press freedom became more universal and less qualified.

The significance of 1695 has, however, been debated. Womersley also points out that writers like Jonathan Swift had profound reservations about the merits of free-thinking, let alone free expression. Elsewhere, scholars have noted that the decision not to renew press legislation reflected opposition to the Stationers' Company monopoly, rather than a conscious decision to liberate the press, and that numerous attempts were made to find other means to ensure some kind of regulation. This suggests that contemporaries were divided over the means – not the desirability – of press control.[94]

A more crucial issue involves contemporary thinking on how to deal with undesirable texts, especially ones regarding religion. Swift, as Womersley shows, was concerned about heterodox opinions, but did not favour the use of state power to deal with them, and relied instead upon the need for self-restraint. Others, however, continued to believe in press restraint, not least because souls needed to be saved by protecting truth from falsity.[95] In Chapter 8, Robert Ingram and Alex Barber reflect on the importance of, and the fate of, blasphemy legislation, successfully introduced in 1698, but then unsuccessfully re-enacted in 1721. They demonstrate the importance that continued to be attached to restraint as a necessary means of protecting 'truth', but also challenge the idea that the failure of the 1721 bill reflected principled support for free speech, even if some contemporaries certainly feared the prospect of 'persecution'. The key, they argue, is that ideas about restraint were predicated upon the need to protect truth *and* civil peace, and in the end the failure to pass the blasphemy bill in 1721 reflected changing views about the conditions in which restraint should be effected, and a recognition that this might not serve the interests of the state and the achievement of civil peace.

What certainly happened was that greater importance was attached to post-publication regulation, by prosecuting people for seditious libel. Publishers (Edmund Curll), journalists (John Tutchin) and pamphleteers (Daniel Defoe), and ultimately priests (Henry Sacheverell) were all targets of legal prosecution. Seditious libel was defined very broadly: it could involve questioning the succession, commenting on foreign and military affairs, and challenging the church's position within the constitution, or launching personal attacks on the monarch and courtiers. Nevertheless, zealous searches for illicit texts gradually fell out of fashion, and successful prosecutions were relatively rare, outside of fairly specific periods, such as 1704–8. As such, whilst there were *moments* when the press came under particularly intense pressure – as in 1714–16 – the system has more generally been described as 'haphazard', and Alan Downie argued that Robert Harley, more interested in propaganda than in suppression, actually contributed to 'the rise of a free press'. Indeed, to the extent that attempts were made to tighten control and close loopholes in the decades that followed, successive ministries encountered difficulties in securing convictions, and 'surrendered to impotence'.[96]

Of course, as Max Skjönsberg (Chapter 9) demonstrates, there were moments when threats to freedom of expression became much more real. He points to the late 1730s, when Walpole's ministry introduced pre-performance censorship of stage plays and clamped down on the reporting of parliamentary debates. At the same time, he also notes that such measures prompted vigorous debate (including the reprinting of Milton's *Areopagitica*), and indeed Hume's famous essay on the liberty of the press (1741). More obviously, governments subjected authors and stationers to *harassment*, and it seems likely that the threat of prosecution generated nervousness about printing scandalous things and encouraged self-restraint. Nevertheless, the use of informers and press spies constituted a system of surveillance, intimidation and *policing* more obviously than a policy of control.[97]

In short, the government tried to ensure that authors and publishers were *held to account* for the publication of unacceptable works. In passing judgement on Tutchin in 1704, for instance, Chief Justice Holt stated that 'if men should not be called to account for possessing the people with an ill opinion of the Government, no Government can subsist'.[98] Defoe, writing in 1714, advocated taking action against the hawkers of cheap print because such material made governments 'familiar' and 'contemptible' to the people'.[99] Yet again the concern was with material that reached a mass audience.

Crucially, however, a system based on the absence of pre-publication licensing, but with the capacity for post-publication censorship, was described throughout the eighteenth century as *constituting* a free press, and as a 'bulwark of our liberty'. Defoe denied that 'liberty' would be 'abridged' even if outspoken authors and their printers were 'punished', and the *Craftsman* explained in 1726 that press freedom involved 'an unreserved, discretionary power for every man to publish his thoughts on any subject, and in any

manner, which is not expressly forbidden by the laws of the land, without being obliged to apply for a license or privilege for so doing'. 'Freedom of speech', in short, was thought to be compatible with the punishment of offensive literature, because people could 'publish and be damned'. As such it is not implausible to argue that 'the end of licensing was liberty of the press'.[100] Indeed, as Skjönsberg demonstrates, the laxity of press regulation in Britain by the mid-eighteenth century was often deemed vital to the maintenance of a balanced constitution. It is even plausible to suggest that Chief Justice Mansfield expressed a more or less *consensual* position in 1783 by ruling that 'the liberty of the press consists in printing without any previous license, subject to the consequences of law', before adding that the 'licentiousness of the press is Pandora's box, the source of every evil'.[101]

Thus, while press control was not discussed in the 1689 Bill of Rights, it is wrong to say that there was no theoretical framework for press freedom after 1695.[102] It is true that few people made principled or philosophical claims for unlimited press freedom, although, as Ann Thomson shows (Chapter 7), it is possible to find spirited challenges to censorship and defences of press freedom from men like John Toland. Such claims could be made on Miltonic grounds – in order to encourage the search for truth – although for Toland another issue was the need to be able to expose abuses of power. As Thomson shows, moreover, defences of press freedom tended to relate to philosophical enquiry, rather than other political and religious issues; tended to involve claims about freedom for an intellectual elite; and tended to involve works for which there would likely be a limited audience. Free-thinkers distinguished between textual freedom and freedom of speech and were willing to countenance the punishment of sedition and treason. Their claims were thus not about unfettered freedom.

Of course, the situation remained somewhat *unstable* for most of the eighteenth century, and disputes persisted about the degree of acceptable press freedom. For some scholars the Wilkite campaign to overturn restrictions on newspaper reporting represented the 'final step in the campaign for a free press'.[103] John Wilkes certainly described press freedom as the 'birthright of a Briton, and ... the firmest bulwark of the liberties of this country'.[104] Others too made impassioned pleas for free expression, justifying libels and journalism that held public figures to account, and by this stage it was possible to argue that the press constituted a 'fourth estate', wherein journalists had 'an undoubted *right* publicly to complain of the conduct of ministers when they do wrong'.[105] By the 1770s there was widespread support for a version of press freedom that could distinguish *freedom* from *licentiousness*, and this too was reflected in legal pronouncements.[106] Blackstone declared that liberty of the press was 'essential to the nature of a free state', adding that 'this consists in laying no previous restraints upon publications and not in freedom from censure for criminal matter when published'. For Blackstone, every free

man had a *right* to 'lay what sentiments he pleases before the public', but, if anyone published things deemed 'improper, mischievous or illegal', they needed to accept the consequences. This did not involve, he insisted, any 'restraint' being 'laid upon freedom of thought or inquiry'.[107]

Such views perhaps involved *qualified* support for press freedom, and care is needed about precisely what kind of 'rights' were thought to be involved and what this term meant. Concerns certainly persisted about 'lively and controversial journalism', about mass audiences and about 'popularity', whereby a politician might make himself 'an eternal slave to the wills, opinions and judgments of those whom he seeks for his followers'.[108] Hume, as Skjönsberg recognises, edited his essay on press freedom in 1770, in order to offer a much less ringing endorsement of press freedom, and did so in direct response to the perceived threat that Wilkes posed to political stability.

For other scholars, however, the Blackstonian position was not the end of the story. Patrick Peel (Chapter 10) challenges the notion that Blackstone's vision prevailed in revolutionary North America. In ways that echo David Como's chapter he emphasises the importance of petitions, which opens up his exploration of a distinctively 'free state' approach to citizenship. This emphasised the power of the 'people' and placed greater emphasis on the importance of press freedom as the 'channel through which the oppressed may utter their injuries', and indeed as a *right*. Intriguingly, Peel notes that these ideas gave way to a more circumscribed vision only after the 1840s.[109] As such, there is scope – as some historians of the English press have argued – to focus upon Fox's Libel Act (1792) as the moment that constituted the 'final check' on government power, because it empowered juries to do more than merely judge 'facts'. This arguably made it possible for 'public opinion' to intervene between a government and its critics. The 1792 act was not immediately effective, given the prosecution of Thomas Paine and the more repressive measures of the 1790s, but such retrenchment did little to halt the decline in the use of seditious libel in the early nineteenth century.[110] Indeed, in 1792 Lord Erskine referred to Paine by stating that 'every man, not intending to mislead, but seeking to enlighten others and what his own reason and conscience ... have dictated to him as truth, may address himself to the universal reason of the whole nation, either upon the subjects of government in general, or upon that of our own particular country'.[111] As such, some have argued that a version of freedom of the press finally became *normative*, even if disputes remained over 'the exact location of that fine line separating liberty from license'.[112]

Nevertheless, as the two final chapters in this volume suggest, there is considerable value in looking *beyond* the 1790s. For key themes from the previous two centuries resonated into the nineteenth century. Greg Conti (Chapter 11) draws much-needed attention to Samuel Bailey, an early nineteenth-century author whose *Essays on the Formation and Publication of Opinions* (1829) predates John Stuart Mill's more famous treatment of the subject. Bailey's

Essays were more radical than Mill's treatment, in terms of their treatment of social intolerance and the tyranny of public opinion and their emphasis on the value of a marketplace of ideas for the achievement of truth and peace. Bailey represents a distinctly new phase in thinking about press freedom, although he was not reflecting on the negative effects of democracy, or on the tyranny of the *majority*. More importantly, while Bailey clearly regarded free speech as a right, he also signalled continuity with the past by insisting that it was also a *duty*, even if he regarded this as a duty to express things that were thought to be true, rather than to *find* the truth.

Finally, Chris Barker (Chapter 12) draws attention to how even John Stuart Mill delimited free expression. It has long been recognised that Mill insisted on protecting the private lives of public individuals and worried that speech acts that might provoke violence. What Barker crucially draws attention to, however, is Mill's attitude towards press freedom in imperial India, where there were *ongoing* issues over whether it was better to engage in pre-publication censorship or post-publication control and where Mill advocated imposing restraints. What seems clear is that his attitude was utilitarian, not absolutist; his approach was contextual, and he regarded freedoms as *conditional*. For Mill, in other words, press freedom was *inappropriate* in an Indian context, given what he viewed as the existing nature of the Indian public.

This is an unsettling but important conclusion to a survey of scholarship on how press control and press freedom were thought about, discussed and practised before the mid-nineteenth century in the English-speaking world. Nevertheless, this survey and this volume are clearly significant. The chapters comprising this book indicate that there was no linear path towards press freedom and that great care is needed when discussing what freedom of the press and freedom of speech meant over time. Both in theory and in practice such things were – as they remain – unstable, and we must recognise both complexity and contingency.[113] This means recognising that contemporaries may have worried more about *manner* than *matter*; about the tone of printed texts ('licentiousness') more than their substantive content; and about texts that reached mass audiences more than those that were more exclusive. Decision-making about particular texts was influenced by considerations of genre, theme, style and audience. And different texts got treated differently. This perhaps made it possible to think afresh about religious discourse, printed news and political commentary. It also means thinking about both the aims and the effectiveness of press control, not just in terms of whether licensing represented *control* rather than *influence* but also in terms of whether it makes sense to read *intention* from *effect*, and it is also vital to recognise that the challenge of ensuring effective control had an impact on governmental ambitions. Indeed, it also makes sense to recognise that press 'control' took many forms, from pre-publication censorship to post-publication restraint,

as well as surveillance, intimidation and harassment, and the policing of opinion.

Likewise, it is also necessary to reflect carefully on how contemporaries made claims – or demands – about press freedom. No matter how much more vocal exponents of free speech became, there remained many who were nervous about, or opposed to, the waning of restraint, not least because of concerns about the need to protect truth, ensure salvation and maintain peace. It is also important to be cautious about regarding such demands as involving unconditional or unfettered freedom, and about the basis on which free speech was validated. Freedom of expression could be regarded as a duty rather than a right, and contemporaries also recognised situations in which self-restraint was necessary. In that sense, restraint was not necessarily something that needed to be *imposed*. It also seems clear that, whilst some linked freedom of expression to freedom of thought, and to the search for truth, others were motivated by the need to ensure effective accountability and oversight, to prevent corruption and the abuse of power, and to maintain the constitution and the people's liberties. Beyond this, there were also many different reasons for opposing certain forms of press control, most of which did not involve a principled demand for freedom, and many of those who demanded free speech accepted the need for some kind of control or restraint, in terms of licentiousness, sedition and treason, and perhaps heresy. As such, it is unnecessary to equate freedom with the absence of control, or to suggest that limitations on free speech necessarily involved the infringement of liberties, not least when civil peace was at stake.

Such cautions are vital to the history of free speech, and they might even be salutary in relation to modern debates. Ultimately, however, it is also necessary to acknowledge that amid all of the continuities of thought and practice from the sixteenth to the nineteenth century, things looked very different by Victoria's reign compared with the reign of Henry VIII. What gives this period coherence was not that things remained the same over time, but rather how differently free speech was discussed in the early modern compared to the modern world. This might even prove instructive, not least by recognising how both religious and constitutional issues were central to debates about free speech, and became intertwined with each other in complex ways. Such coherence also involves our ability to recognise that, while any appreciation of free speech needs to recognise how public discourse worked in contextual moments, and that most demands for free speech involved contextualised forms of lobbying, it is also possible to observe the slow gestation and crystallisation of key ideas: *distrust* in pre-publication censorship; the relationship between free speech, anti-corruption and political accountability; and the notion of restraint being compatible with freedoms and liberties. Ultimately, the period witnessed messy and somewhat fraught change – non-linear, contested and perhaps dialectical – in terms of the degree to which it was thought necessary and possible to suppress unwelcome ideas, and in terms

of the fact that there emerged a widely endorsed language of press freedom involving notions of rights and liberties. It is possible to recognise such changes while also acknowledging that press freedom was rarely if ever the same as freedom of expression, amid the persistence of ideas that the press needed to be monitored and policed, and that licentiousness ought to be punished somehow.

NOTES

1 D. Defoe, 'An Essay on the Regulation of the Press (1704)', in W. Owens (ed.), *The Political and Economic Writings of Daniel Defoe. Volume 8: Social Reform* (2000), 145.

2 R. Ingram, *Reformation without End: Religion, Politics and the Past in Post-Revolutionary England* (Manchester, 2018).

3 Defoe, 'Essay on the Regulation of the Press', 147.

4 Ibid., 146.

5 Ibid., 150.

6 Ibid., 149.

7 T. Bejan, *Mere Civility: Disagreement and the Limits of Toleration* (Cambridge, MA, 2018).

8 L. Siedentop, *Inventing the Individual* (Cambridge, MA, 2014), 2.

9 See, for instance, P. Deneen, *Why Liberalism Failed* (New Haven, 2018), 31–4.

10 T. Garton Ash, *Free Speech* (New Haven, 2016), 207. See also R. Dworkin, *Matter of Principle* (Cambridge, MA, 1985), 335–87; *Justice for Hedgehogs* (Cambridge, MA, 2011), 364–79, esp. 372–4.

11 S. Fitzpatrick, *Everyday Stalinism: Ordinary Life in Extraordinary Times: Soviet Russia in the 1930s* (Oxford, 1999), 164–89.

12 F. Fukuyama, *The End of History and the Last of Man* (New York, 1992).

13 H. Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law', *Georgia Journal of International and Comparative Law* 25 (1995–96), 25.

14 J. Winter and A. Prost, *René Cassin and Human Rights: From the Great War to the Universal Declaration* (Cambridge, 2013).

15 A. Mondal, *Islam and Controversy: The Politics of Free Speech after Rushdie* (Basingstoke, 2014), 97–146.

16 W. Bulman, 'Introduction: Enlightenment for the Culture Wars', in W. Bulman and R. Ingram (eds), *God in the Enlightenment* (Oxford, 2016), 1–41.

17 Quoted in P. Weller, *A Mirror for Our Times: 'The Rushdie Affair' and the Future of Multiculturalism* (2009), 21.

18 L. Maer, *The Abolition of Blasphemy Offences* (2008).

19 See *Ethnicities* 9 (2009), 291–447.

20 *Case of E.S. v. Austria* (25 October 2018).

21 H. Bielefeldt, N. Ghanea and M. Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford, 2016).

22 'Cairo Declaration of Human Rights', in T. Stahnke and P. Martin (eds), *Religion and Human Rights* (New York, 1998), 185–9.

23 R. Dworkin, 'The Right to Ridicule', *New York Review of Books* (23 March 2006).

24 J. Waldron, *The Harm in Hate Speech* (Cambridge, MA, 2012), 4, 5. See Ivan Hare and James Weinstein, *Extreme Speech and Democracy* (Oxford, 2009), 123–285.

25 Waldron, *Harm*, 204–33. See also J. Waldron, *God, Locke and Equality: Christian Foundations of Locke's Political Thought* (Cambridge, 2002). Cf. Bejan, *Mere Civility*.

26 Cf. E. Powers (ed.), *Freedom of Speech: The History of an Idea* (Lewisburg, 2011), which focuses on the eighteenth century.

27 T. Macaulay, *The Works of Lord Macaulay* (1871), IV, 126.

28 J. Habermas, *The Structural Transformation of the Public Sphere*, trans. T. Burger (Cambridge, MA, 1989), 58.

29 C. Calhoun, 'Introduction', in C. Calhoun (ed.), *Habermas and the Public Sphere* (Cambridge, MA, 1992), 35–6.

30 M. Knights, 'How Rational Was the Later Stuart Public Sphere?', in P. Lake and S. Pincus (eds), *The Politics of the Public Sphere in Early Modern England* (Manchester, 2007), 252–67.

31 J. Habermas, *Between Naturalism and Religion* (Cambridge, 2008), 99–147.

32 Ibid., 5.

33 J. Clare, 'Censorship', in A. Kinney (ed.), *Oxford Handbook of Shakespeare* (Oxford, 2011), 276–94; M. Dzelzainis, 'Managing the Later Stuart Press, 1662–1696', in L. Hutson (ed.), *Oxford Handbook of English Law and Literature, 1500–1700* (Oxford, 2017), 507–28, 529–47.

34 J. Peacey, 'The Revolution in Print', in M. Braddick (ed.), *Oxford Handbook of the English Revolution* (Oxford, 2015), 276–93; P. Lake and S. Pincus, 'Rethinking the Public Sphere', in P. Lake and S. Pincus (eds), *The Politics of the Public Sphere in Early Modern England* (Manchester, 2007), 1–30.

35 The treatment of slanderous and seditious *speech* has more or less been the preserve of social historians: D. Cressy, *Dangerous Talk: Scandalous, Seditious and Treasonable Speech in Pre-Modern England* (Oxford, 2010); A. Bellany, 'Libel', in J. Raymond, *Oxford History of Popular Print Culture: Volume One: Cheap Print in Britain and Ireland to 1660* (Oxford, 2011), 141–63.

36 F. Siebert, *Freedom of the Press in England, 1476–1776* (1952). See also W. Clyde, *The Struggle for the Freedom of the Press from Caxton to Cromwell* (1934).

37 C. Hill, 'Censorship and English Literature', in *Collected Essays of Christopher Hill* (Brighton, 1984), I, 32–71.

38 J. Clare, *Art Made Tongue-tied by Authority: Elizabethan and Jacobean Dramatic Censorship* (Manchester, 1999).

39 A. Patterson, *Censorship and Interpretation: The Conditions of Reading and Writing in Early-Modern England* (Madison, WI, 1984), 17.

40 P. Lake, 'Post-Reformation Politics, or on Not Looking for the Long-term Causes of the English Civil War', in M. Braddick (ed.), *Oxford Handbook of the English Revolution* (Oxford, 2015), 21–42.

41 S. Lambert, 'State Control of the Press in Theory and Practice: The Role of the Stationers' Company before 1640', in R. Myers and M. Harris (eds), *Censorship and the Control of Print in England and France, 1600–1900* (Winchester, 1992), 1–32; B. Worden, 'Literature and Political Censorship in Early Modern England',

in A. Duke and C. Tamse (eds), *Too Mighty to Be Free: Censorship and the Press in Britain and the Netherlands* (Zutphen, 1987), 45, 48. See also D. Loades, 'The Press under the Early Tudors: A Study in Censorship and Sedition', *Transactions of the Cambridge Bibliographical Association* 4 (1964), 50; D. Loades, 'The Theory and Practice of Censorship in Sixteenth-century England', *TRHS* 24 (1974), 141–57; L. Rostenberg, *The Minority Press and the English Crown: A Study in Repression, 1558–1625* (Niewkoop, 1971), 81.

42 C. Clegg, *Press Censorship in Elizabethan England* (Cambridge, 1997), 219.

43 D. Shuger, *Censorship and Cultural Sensibility: The Regulation of Language in Tudor-Stuart England* (Philadelphia, 2006), 243.

44 Clegg, *Elizabethan England*, 5, 75, 79–102, 138–69; C. Clegg, *Press Censorship in Jacobean England* (Cambridge, 2001), 23, 68–89.

45 Clegg, *Jacobean England*, 20, 66–7.

46 Clegg, *Elizabethan England*, 103–22; Clegg, *Jacobean England*, 123, 194; C. Clegg, *Press Censorship in Caroline England* (Cambridge, 2008), 16, 25, 30, 39, 115; R. McCabe, '"Right Puisante and Terrible Priests": The Role of the Anglican Clergy in Elizabethan Censorship', in A. Hadfield (ed.), *Literature and Censorship in Renaissance England* (Basingstoke, 2001), 75–94; Shuger, *Censorship*, 236.

47 Clegg, *Elizabethan England*, 122.

48 Loades, 'The Press', 49.

49 Clegg, *Elizabethan England*, 6, 10–11, 13, 19, 20–1; Clegg, *Caroline England*, 9, 29, 31–2, 35–6; G. Johnson, 'The Stationers versus the Drapers: Control of the Press in the Late Sixteenth Century', *Library* 10 (1988), 1–17; F. Nash, 'English Licenses to Print and Grants of Copyright in the 1640s', *Library* 4 (1982), 174–84; M. Bell, 'Entrance in the Stationers' Register', *Library* 16 (1994), 50–4; W. Greg, 'Entrance, License and Publication', *Library* 25 (1994), 1–14.

50 Clegg, *Elizabethan England*, 170–217; R. McCabe, 'Elizabethan Satire and the Bishops' Ban of 1599', *Yearbook of English Studies* 11 (1981), 188–93.

51 D. Shuger, 'Civility and Censorship in Early Modern England', in R. Post (ed.), *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles, 1998), 91; Shuger, *Censorship*, 4–5, 6, 69, 77, 103, 165, 219, 231–2, 272.

52 Worden, 'Literature', 47; Lambert, 'State Control', 7.

53 Shuger, *Censorship*, 236.

54 T. Cogswell, 'Thomas Middleton and the Court, 1624: *A Game at Chess* in Context', *HLQ* 47 (1984), 273–88; N. Mears, 'Counsel, Public Debate and Queenship: John Stubbs's *The Discoverie of a Gaping Gulf*, 1579', *HJ* 44 (2001), 629–50; M. Kishlansky, 'A Whipper Whipped: The Sedition of William Prynne', *HJ* 56 (2013), 603–27.

55 D. Woodfield, *Surreptitious Printing in England, 1550–1640* (New York, 1973); Clegg, *Caroline England*, 11, 14, 24.

56 Patterson, *Censorship*, 75; P. Finkelpearl, '"The Comedians' Liberty": Censorship of the Jacobean Stage Reconsidered', *ELR* 16 (1986), 125.

57 Shuger, *Censorship*, 244.

58 T. Freeman, 'Publish and Perish: The Scribal Culture of the Marian Martyrs', in J. Crick and A. Walsham (eds), *The Uses of Script and Print: 1300–1700* (Cambridge, 2004), 235–54; S. Foster, *Notes from the Caroline Underground* (Hamden, CT, 1978).

59 R. Cust, 'News and Politics in Early Seventeenth-century England', *P&P*
    112 (1986), 60–90, J. Boys, *London's News Press and the Thirty Years War*
    (Woodbridge, 2011).
60 Clegg, *Jacobean England*, 161–96; Clegg, *Caroline England*, 191–4.
61 Shuger, *Censorship*, 238–9; D. Ginsberg, 'Ploughboys versus Prelates: Tyndale
    and More and the Politics of Biblical Translation', *SCJ* 19 (1988), 45–61.
62 Clegg, *Caroline England*, 89, 108–12, 115, 120–1, 124, 166–78. Cf. Kishlansky, 'A
    Whipper Whipped'.
63 A. Hunt, 'Licensing and Religious Censorship in Early Modern England', in
    A. Hadfield (ed.), *Literature and Censorship in Renaissance England* (Basingstoke,
    2001), 135.
64 F. Williams, 'The Laudian imprimatur', *Library* 15 (1960), 96–104; W. Schleiner,
    '"A plot to have his nose and eares cut off": Schoppe as Seen by the Archbishop
    of Canterbury', *Renaissance and Reformation* 19 (1995), 69–86; N. Bawcutt, 'A
    Crisis of Laudian Censorship: Nicholas and John Okes and the Publication of
    Sales's *An Introduction to a Devout Life* in 1637', *Library* 1 (2000), 406–22; Clegg,
    Caroline England, 45, 60–7.
65 Shuger, *Censorship*, 263.
66 P. Lake, *The Boxmaker's Revenge: 'Orthodoxy', 'Heterodoxy', and the Politics of the
    Parish in Early Stuart London* (Stanford, 2002).
67 Clegg, *Caroline England*, 41, 45, 95, 65–7, 78, 164, 181.
68 Ibid., 219–20.
69 Patterson, *Censorship*, 52, 77.
70 Ibid., 4.
71 D. Colclough, *Freedom of Speech in Early Stuart England* (Cambridge, 2005),
    209–11; M. O'Callaghan, *The 'Shepheards Nation': Jacobean Spenserians and Early
    Stuart Political Culture, 1612–1625* (Oxford, 2000), 147–96.
72 See also, Bellany, 'Libel'; T. Cogswell, 'Underground Verse and the
    Transformation of Early Stuart Political Culture', *HLQ* 60 (1998), 303–26.
73 J. Neale, 'The Commons Privilege of Free Speech in Parliament', in E. Fryde and
    E. Miller (eds), *Historical Studies of the English Parliament* (Cambridge, 1970),
    II, 147–76; H. Hulme, 'The Winning of Freedom of Speech by the House of
    Commons', *AHR* 61 (1956), 825–53.
74 Colclough, *Freedom*, 184, 194–250.
75 J. Peacey, *Politicians and Pamphleteers: Propaganda during the English Civil Wars
    and Interregnum* (Farnham, 2004), 132–62.
76 Hill, 'Censorship', 50.
77 C. Blagden, 'The Stationers' Company in the Civil War Period', *Library* 13 (1958),
    1–17; T. Clancy, 'The Beacon Controversy, 1652–7', *Recusant History* 9 (1967),
    63–74; H. Plomer, 'Some Dealings of the Long Parliament with the Press',
    Library 10 (1909), 90–7.
78 T. Nexo, 'Between Lies and Real Books: The Breakdown of Censorship and the
    Modes of Printed Discourse during the English Civil War', in M. Laerke (ed.),
    The Use of Censorship in the Enlightenment (Leiden, 2009), 77–94; L. Miller, 'The
    Shattered *Violl*: Print and Textuality in the 1640s', *Essays and Studies* (1993),
    25–38.
79 Peacey, *Politicians*, 132–62; Clegg, *Caroline England*, 231.

80 Worden, 'Literature', 47.
81 B. Hoxby, '*Areopagitica* and Liberty', in N. McDowell and N. Smith (eds), *Oxford Handbook of Milton* (Oxford, 2009), 218–37; D. Como, 'Print, Censorship and Ideological Escalation in the English Civil War', *JBS* 51 (2012), 843.
82 Como, 'Ideological Escalation', 821, 837; Clegg, *Caroline England*, 232; *Two Treatises* (1645).
83 *To the Right Honourable the Supreme Authority of this Nation* (1649).
84 *Perfect Diurnall* 304 (21–8 May 1649), 2531.
85 J. Walker, 'The Censorship of the Press during the Reign of Charles II', *History* 35 (1950), 219–38; M. Treadwell, 'Stationers and the Printing Acts at the End of the Seventeenth Century', in J. Barnard and D. McKenzie (eds), *The Cambridge History of the Book: Volume 4: 1557–1695* (Cambridge, 2002), 755–76.
86 Hill, 'Censorship', 51.
87 M. Knights, *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford, 2004).
88 Hill, 'Censorship', 53; T. Crist, 'Government Control of the Press after the Expiration of the Printing Act in 1679', *Publishing History* 5 (1979), 49–77; L. Schowerer, 'Liberty of the Press and Public Opinion, 1660–1695', in J. Jones (ed.), *Liberty Secured? Britain Before and After 1688* (Stanford, 1992), 199–230.
89 T. Harris, *London Crowds in the Reign of Charles II* (Cambridge, 1987), 62–129; M. Knights, *Politics and Opinion in Crisis, 1678–81* (Cambridge, 1994).
90 L. Schwoerer, 'Press and Parliament in the Revolution of 1689', *HJ* 20 (1977), 545–67; P. Monod, 'The Jacobite Press and English Censorship, 1689–95', in E. Cruickshanks and E. Corp (eds), *The Stuart Court in Exile and the Jacobites* (1995), 127–34.
91 C. Blount, *A Just Vindication of Learning* (1679); C. Blount, *Reasons Humbly Offered for the Liberty of Unlicens'd Printing* (1699).
92 Monod, 'Jacobite Press', 141–2.
93 J. Feather, 'The English Book Trade and the Law, 1695–1799', *Publishing History* 12 (1982), 52.
94 L. Hanson, *Government and the Press, 1695–1763* (Oxford, 1967), 8–9. For other means to control the press, see R. Astbury, 'The Renewal of Licensing Act in 1693 and Its Lapse in 1695', *Library* 33 (1978), 296–322; J. Feather, 'The Book Trade in Politics: The Making of the Copyright Act of 1710', *Publishing History* 8 (1980), 19–44; J. Downie, *Robert Harley and the Press: Propaganda and Public Opinion in the Age of Swift and Defoe* (Cambridge, 1979), 149–61; J. Downie, 'The Growth of Government Tolerance of the Press to 1790', in R. Myers and M. Harris (eds), *Development of the English Book Trade, 1700–1899* (Oxford, 1981).
95 A. Barber, '"Why don't those lazy priests answer the book?": Matthew Tindal, Censorship, Freedom of the Press and Religious Debate in Early Eighteenth-century England', *History* 98 (2013), 680–707; A. Barber, 'Censorship, Salvation and the Preaching of Francis Higgins: A Reconsideration of High Church Politics and Theology in the Early 18th century', *PH* 33 (2014), 114–39.
96 Hanson, *Government*, 36–73; M. Ezell, *The Later Seventeenth* Century (Oxford, 2017), 445–54.
97 J. Hyland, 'Liberty and Libel: Government and the Press during the Succession Crisis in Britain, 1712–1716', *EHR* 101 (1986), 863–88; Hanson, *Government*,

39–44; H. Snyder, 'The Reports of a Press Spy for Robert Harley: New Bibliographical Data for the Reign of Queen Anne', *Library* 22 (1967), 326–45; M. Treadwell, 'A Further Report from Harley's Press Spy', *Library* 2 (1980), 216–18; Patterson, *Censorship*, 118.

  98 Quoted in P. Hamburger, 'The Development of the Law of Seditious Libel and the Control of the Press', *Stanford Law Review* 661 (1985), 735.

  99 Quoted in Hyland, 'Liberty and Libel', 863.

100 Ibid.; G. Kemp, 'The "End of Censorship" and the Politics of Toleration, from Locke to Sacheverell', *PH* 31 (2012), 53, 64.

101 Quoted in J. Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill, 2004), 229.

102 Hanson, *Government*, 2; Schwoerer, 'Liberty of the Press'.

103 Hanson, *Government*, 30–2; Downie, 'Growth', 60.

104 R. Rea, '"Liberty of the Press" as an Issue in English Politics, 1792–1793', *Historian* 24 (1961), 26.

105 E. Hellmuth 'The Palladium of All Other English Liberties: Reflections on the Liberty of the Press in England during the 1760s and 1770s', in E. Hellmuth (ed.), *The Transformation of Political Culture: England and Germany in the Late Eighteenth Century* (Oxford, 1990), 490–4.

106 Ibid., 478.

107 Quoted in ibid., 479–80.

108 Ibid., 481, 485.

109 See also M. Warner, *The Letters of the Republic: Publication and the Public Sphere in Eighteenth-century America* (Cambridge, MA, 1990).

110 T. Ross, *Writing in Public: Literature and the Liberty of the Press in Eighteenth-century Britain* (Baltimore, 2018).

111 Siebert, *Freedom*, 392.

112 Rea, 'The Liberty of the Press', 26.

113 Patterson, *Censorship*, 3.