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From seemly subjects to enlightened citizens

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From seemly subjects to enlightened citizens

Censorship and press freedom from the Middle Ages to the 18th century

Jonas Nordin

His Majesty's Gracious Ordinance Regarding the Freedom of Writing and Printing (Kongl. Maj:ts Nådige Förordning, Angående Skrif- och Tryckfriheten), issued on 2 December 1766, would never have seen the light of day had it not been for the particular political circumstances that prevailed in Sweden during the Age of Liberty ('frihetstiden'). This is the period in Swedish history between the death of Charles XII in 1718 and the coup d'état by Gustav III in 1772. Over almost two generations, Sweden enjoyed a peculiar republican form of government while at the same time experiencing sweeping changes to the social climate, ideas about constitutional law and political culture. At the beginning of the Age of Liberty, Sweden was characterised in religious, political and cultural matters by traditions established many centuries earlier. By the time the period ended with Gustav III's reactionary revolution, the intellectual atmosphere had been changed in fundamental ways and Sweden had taken the first step towards a modern conception of society. This transformation could only be temporarily slowed by the new, anachronistic form of government.

Developments during the Age of Liberty reflected currents of thinking which were moving across the western world, but at the same time were firmly rooted in Swedish domestic politics. The Riksdag system, with its comparatively open political debate and – for its time – a considerable readiness for radical reform, has paradoxically led historians to obscure the radical ideas that emerged. This is because the Riksdag system allowed for divergent opinions to be put forward in matters of national policy, and big ideas could therefore be hidden in pedantic and detailed motions tabled on policy issues. In contrast, in countries with more monopolistic

forms of government, political visions had to be expressed in general terms of principle. Such ideas most often exerted a negligible effect on current political issues, but with their generalist claims they contributed to changing European social thinking over the longer term. Sweden, like other European states, was influenced by this 'Enlightenment' and in the final decade of the Age of Liberty we can see how these currents from the Continent helped radicalise domestic policy-making.[1]

'The Age of Liberty' was a term in contemporaneous use. *En Ärlig Swensk* ('An Honest Swede'), a political periodical, wrote in 1755 that 'we have also been fortunate in that, throughout the Age of Liberty, we have had such venerable leaders who have loved and protected the liberty of Swedes'. And elsewhere: 'free peoples have the freedom and right to speak freely, manifestly and to all of their freedom, their rights and precious privileges.'[2]

But what did 'liberty' mean at this time? The term is elusive, as it was used in all political camps. It held a generally positive charge, and was specific and vague at the same time, much like 'democracy' is in today's political parlance. Bo Lindberg, a historian of ideas, has analytically identified four sorts of liberty: religious independence, national independence, constitutional freedom and the due process of law.[3]

Swedish debate during the 16th and 17th centuries dealt above all with the two former types, or freedom from the Roman Catholic church and from foreign domination. The two latter, more sophisticated discussions were not wholly absent, but did not become central until the 18th century.[4] Constitutional liberty was won through the 1719 and 1720 instruments of government, which abolished absolutism. The new form of government shifted power to the Council of the Realm, turning it into the country's de facto government, and to the Riksdag, which developed into a legislative body with control over the rule of the realm. The King had an important symbolic function, but lacked real power.[5]

This form of government grew mainly out of a national constitutional tradition: the founding fathers had studied older Swedish instruments of government and drawn lessons from historical experience. Nonetheless, with its republican flavour – which was strengthened over time – the polity became a singularity, without parallel in earlier forms of rule. One contributing factor to this was that leading personalities began to interpret government in light of contemporary philosophical tendencies, which in turn were inspired by constitutional law from antiquity while also promoting entirely new egalitarian notions. The basis for this shift in outlook was natural law, which reached Sweden by various avenues. Considerable influence was exercised by the German philosopher Samuel von Pufendorf (1632–1694), active in Sweden between 1668 and 1688, and the English

"On the correct use and misuse of books." The men in the library find benefit and pleasure in reading. In the background, at left, learned men enter through the doors of the academy while at right, objectionable books are burned. The engraver of the Dutch title page, Johannes van den Aveelen, later entered Swedish service and died in Stockholm in 1728. National Library of Sweden.

Enlightenment thinker John Locke (1632–1704), whose second Treatise of Government was published in Swedish translation in 1726 as *Oförgripelige tankar om werldslig regerings rätta ursprung, gräntsor och ändamål*.

A history of freedom of expression and the press is a history of more general social ideas. The notion that each individual has the unlimited right to express his or her views, on subjects that he or she is free to define, is historically contingent. It was really only during the 18th century that this position began to be argued for – for the better part of European history it had been viewed as unreasonable, if it had even been formulated in the first place.[6] In order to understand the extent of the new thinking that was going on at this time, we have to make our way further back through history. The views on politics, society and civil rights that were articulated then would mark Europe for centuries, and differed in fundamental ways from modern views, which are rooted in the 18th century. These differences can be expressed in a number of opposites, of which the most important in this context are duties vs rights, public vs private and religious vs secular.

John Locke.

The classical heritage and Christianity

Europe's public and learned spheres were dominated from the early Middle Ages until the early 18th century by two systems of thought: Greco-Roman philosophy and Christianity. This is significant for two areas of the history of freedom of expression in particular: the individual's relationship to the state and the view of the origins of power. From the classical world came the notion that man was a social being whose individual interests were subordinate to the needs of the many, while Christianity's claim to absolute truth led to a dogmatic theory of knowledge and an authoritarian view of society.

Most of our fundamental political terms have been borrowed from antiquity, which can be deceptive as they often denoted something quite different then to what we now intend by them. Being a citizen today implies rights and obligations of legal, political and social character, which can be divided into a public and a private sphere. Ideally, citizenship should be ungraded and apply equally for all. Being a citizen in Classical Greece

(Athens) meant belonging to a privileged caste that afforded the right but also the obligation to take part in the governance of the state. Greek citizenship had developed out of a military reform that made everyone who was involved in the defence of the state party to the governance of it. The duty to participate in politics and the legal system was also a form of defence mechanism if we consider the circumstance that citizens were in the minority compared with women, slaves and free foreigners (*métoikos*). Citizenship eventually became a birthright, only attainable if both parents were of citizen-families.[7] The Athenian citizen is therefore most comparable to a nobleman in an aristocratic republic such as Poland in the 17th century.[8]

Latter-day conceptions of Greek statecraft were shaped primarily by Plato and Aristotle. Their views diverged on many matters, but they agreed that democracy was an imperfect form of government. Both rejected democracy's arithmetic conception of equality: if all citizens were equally involved in policymaking, the unworthy would have too much, and the deserving too little, influence. They also shared the view that the citizens belonged to the public, and that the whole was more important than the parts in a polity.[9] These arguments became paradigmatic during the Middle Ages, and contributed to legitimising the estates-based form of government that dominated in European polities until the 19th century. Plato's ideal state presupposed a rational division of labour, and he divided society into three classes – philosophers, warriors and traders – which was subsequently echoed in the three estates system in Europe's Christian countries: clergy, nobility and commoners.

The fundamental inequality between freemen and slaves remained in the Roman republic, but among free citizens there was a ranking system of hereditary classes which had not, on the whole, existed in the Greek city-states.[10] The fundamental rights and freedoms were the same for all citizens, but some groups of citizens were given advantages over other groups by means of laws of exception. Such laws were called privileges (*privilegium*, 'legal provision for an individual') and endured as a feature of European legal systems into the modern era.

It may be noted parenthetically that Roman public administration included two censors, responsible for population censuses and tax rolls respectively. There was also a *regimen morum*, supervision of public morality. Population registers were also used to make note of crimes against morality and good conduct, or failures in the discharge of public duties, which could lead not only to dishonour but to penal taxation and the loss of office and franchise for the individual singled out.[11] Such monitoring of virtue and morality was an expression of the precedence of public over private needs in Roman society. When the terms *censor* and *censure* reap-

peared in vocabularies during the Middle Ages it was precisely in the sense of moral vigilance.

With the advent of Christianity, a new norm system came to dominate the Greco-Roman world. A fundamental shift lay in Christianity's doctrine of a universal and inviolable human value, which had been an unknown concept in the slave societies of antiquity. On the other hand, Christianity was much less tolerant of divergent creeds; polytheistic religions are by their very nature more tolerant than those who know only one God.[12] The Bible became a canonical text, open to interpretation but not to being questioned. Such an absolute standpoint on truth is difficult to reconcile with freedom of opinion. Heretical views can, strictly speaking, only be dealt with in one of two ways: they can be suppressed as subversive or dismissed as irrational. To refute them with arguments from reason is uncalled for when the truth has already been made manifest, and ignoring them has not been ideologically possible as long as religion is regarded as a cornerstone of society's morality. The dominant role of the church in spiritual and intellectual activities, from the Middle Ages onward, therefore brought with it a far-reaching control of opinions. Because the authorised Christian worldview constituted a totality, and the church was allied at an early stage with worldly power, this control came to embrace scientific, political and moral subjects as well.

Medieval learning, scholasticism, was based on Greek philosophy, originally derived from Plato's rationalism. From the 13th century Aristotle's significance grew instead, through Albertus Magnus and Thomas Aquinas. Unlike the Neoplatonists, Thomas saw sensory perceptions as a road to knowledge, but he too believed that God's existence was an immutable truth which shaped interpretation. If sensory perceptions caused man to doubt, then that was because God's all-knowing ways were inscrutable.

Thomism brought advances in scientific methodology, but several circumstances – such as medieval teachers and intellectuals being primarily theologians – contributed to their quick transformation into rigid dogmatism when they were applied at Europe's institutions of learning. Scholasticism sought knowledge from authorities rather than by means of unconditional questions and experiment. While scholasticism did accommodate different views, as a paradigm it formed a holistic system, a whole in which all parts were dependent on each other: theology, natural sciences and social thinking became symbiotic. If one component were disturbed, the others would necessarily be affected.

Since the church regarded itself as holding the keys to true knowledge, it also needed to sanction the dissemination of learning. All copying of text was manual, and each new copy carried the risk of distortion. Transcrip-

tions therefore needed to be inspected, more as a form of quality control than as protection against subversive writings. This is a recurring feature of the history of censorship. A large part – probably the lion's share – of the reviewing work consisted of tasks which were later to become regarded as editorial work: scrutiny by appointed readers, quality inspections, editing and so on. The typical instance of censorship at universities did not involve discarding entire books or oeuvres. Rather, questionable text passages were compiled in compendia, where they were condemned or refuted; after all, these texts were all intended for learning by, and training of, the servants of the faith. By contrast, the Church acted harshly against popular preachers who taught the mysteries of the faith and tried to explain the Bible to the unschooled populace.[13]

In around 1450, Johannes Gutenberg of Mainz, Germany, put the final touches to the printing press and the method for the casting and setting of movable type that he had developed together with Johann Fust and Peter Schöffer. It was now possible to produce books that were identical down to the smallest detail, and could be quality-checked at several stages of the process. Movable type made it possible to make trial prints, corrections and reprints until the desired result was achieved. In many ways, this scope for corrections was more important than the speed and volume of book production – both of which undoubtedly increased markedly with the new technology. Typesetting and printing of Gutenberg's 42-line Bible took more than two years, but in that time period he could produce 180 copies, while a scribe needed three years to produce a single transcription.[14]

The Gutenberg Bible was, more than anything, a continuation of hand copying by other means. Before printing the Bible, however, Gutenberg had tested using his invention to print smaller items such as calendars, leaflets and letters of indulgence. In this he way he introduced a totally new genre, one that would rapidly become significant. Known by collectors today as ephemera, these were various forms of inexpensive, small-format printed matter that could be produced quickly and then distributed widely. Their significance for ordinary people's reading as well as for propaganda and political opinion making would be considerable over the centuries to follow. It was this type of printed matter, with subversive views and more or less credible rumours dignified by the printed form, which would perhaps primarily cause trouble for those in power. This weed-like subspecies of literature could only be fought with fines, iron collars and fire. The ordinary form of censorship was ineffective against it, since publications of this kind never landed on the censor's desk.

Censorship

Book production and censorship have gone hand in hand throughout history. During the Middle Ages, censorship was carried out in monasteries and at universities, and was integrated with manuscript-making. The introduction of the printing press brought new opportunities as well as new threats. The first known censorship statute was issued by the University of Cologne in 1479. About twenty locally produced books, published between 1475 and 1483, were examined under this statute. That same year, in 1479, the Archbishop of Würzburg, Rudolf von Scherenberg, began to use approved printed editions of liturgical texts as the basis for the transcribed manuscripts which were still very much in production.[15] The printed books thus became instruments of standardisation in more ways than one.

In 1485 the Electorate of Mainz, where Gutenberg lived, saw the birth of the first real office of censorship. The art of printing was described as a godsend, but the authorities had not failed to notice that it could also be abused. So in that year Bishop Berthold of Henneberg issued an edict on preliminary review, aimed in particular at translations of church service books. The poverty of the German language would inevitably corrupt the meaning of texts in Latin and Greek, and should such distorted writings end up being read by uneducated men and women, God's sacred truths might be debased. All translations were therefore to be submitted to a censor.[16]

Berthold's decree included two features that have been recurrent in the history of censorship. The first was that it spoke exclusively of the benefit and value of books. Naturally it was more palatable to present the supervision as quality control rather than opinion control, but we must not disregard the circumstance that it often occurred with the best of intentions. This was consumer protection as well as concern for the spiritual well-being of the flock. He who is privy to the eternal truths cannot, with a clear conscience, see fellow men plunge themselves into perdition out of pure ignorance. The second feature was that the edict was imbued with the view that knowledge was not for all men. 'The dangers of a superficial education' is a figure of thought that has survived into the modern era. The view was that learning was acquired by means of a dialectical process, and anyone who skipped one of the steps would be stuck with a lot of worthless, or even harmful, quasi-knowledge. In the corporative view of society championed by the Church, moreover, each citizen had a predetermined fate within that society. It was a concept of equilibrium, which assumed that those at the top bore their swords with a purpose, that the cobbler would stick to his last and the farmer continue to toil behind his plough. Knowledge was for the good as long as it was adapted to the individual's position,

but the wrong kind of knowledge might awaken ambitions that would only lead to personal disappointments and upset the social order.

It is hardly surprising that the Catholic church, as the leading information and knowledge node, was quick to attempt to control book publishing. On 17 November 1487 Pope Innocent VIII issued a censorship edict that claimed to comprehend all of Christianity. A similarly worded bull was issued in 1501, but was limited in its application to Cologne, Mainz, Trier and Magdeburg in Germany. Faced with growing challenges, the Catholic Church convened the Fifth Council of the Lateran, which was held 1511–1517 and produced a series of reform proposals. On 4 May 1515, with the council in session, Pope Leo X issued the *Inter sollicitudines* bull, which for the first time went beyond religious publications and also banned publications that attacked individuals of high standing. Henceforth all books had to be approved by local bishops and inquisitors, or directly by the Vatican, before they could be printed. In the event of a breach of the ban, the offending books could be confiscated and burned, and the printer threatened with excommunication and fines of up to 100 ducats. Approved books were given an official permit, either *approbatio* (endorsement) or *imprimatur* (may be printed). These terms would remain in use for a long time in the printing business. On 15 June 1520, the same Pope issued the even more notorious excommunication bull *Exsurge domine*, which condemned 41 of Martin Luther's 95 theses.[17] Other than that, the most famous expression of censorship is the Church's index of forbidden books, *Index librorum prohibitorum*, which was published in twenty editions between 1559 and 1948.

The monopoly of opinion challenged

In the opposite camp, meanwhile, the art of printing was promptly seized upon by religious dissidents who wanted to reform the church. The medieval life of the mind contained a latent tension between Aristotle's logic and the mysticism of religion revealed. This was only one of several possible points of attack against the unitary Church with its holistic claims. For his part, Martin Luther considered that a single passage from the Bible contained more wisdom and philosophy than Aristotle's entire *Metaphysics*. He rejected the scholastics' deductive method and regarded the Bible as the only means of guidance to true knowledge. On the other hand, the Scriptures per se were not sacred in his view; true understanding was based instead on interpretation. It was therefore nonsense to claim that the German language would not be

capable of delivering God's intent to the flock. From this stance, he set to work in 1521 on translating the Bible into vernacular.[18] This venture was far from innocuous; rather, as indicated above, it flew in the face of fundamental notions of society.

The continent of Europe was soon flooded with heretical and subversive printed matter. The Reformation was facilitated by the new medium and also popularised it. In the course of the revolts and social unrest that characterised large parts of Europe during the first half of the 16th century, the printing press was put to abundant use. Germany, in particular, can be said periodically to have been in the throes of a media war with leaflets, pamphlets and printed handbills. It has been estimated that about 2,400 different leaflets were printed in 1524, totalling 2.4 million copies.[19] A typical example from the German Peasants' War is what are known as the Twelve Articles from Memmingen, a sort of catalogue of rights based on Christian ideas, 25,000 copies of which were printed over just a few months.

At the Diet of Augsburg in 1530 it was decreed that all printed matter specify where it had been printed as well as the printer's name, a regulation that has since become a bibliographic norm and whose connection to censorship is no longer evident. Licences were issued to printers and special oaths had been introduced earlier, in which printers and merchants pledged not to deal with forbidden books. The authorities' fruitless attempts to stem the tide of undesirable writings was expressed in a decree issued by the Holy Roman Emperor, Charles V, in 1550:

> No one, regardless of his authority or privilege, shall hereafter print or write, nor transcribe, copy, or, knowingly, keep, receive, store, conceal or keep secret, sell, acquire, give away, distribute, view, or leave behind in churches, on streets or in other places, any books or writings by Martin Luther.[20]

Contrary to their intention, the detailed regulations imply that the edict was ineffective. With weak central power, controls were hard to maintain. This was a pattern that would be repeated in other places over the course of the following century.

Decentralisation promotes opinion-forming

The German publishing market grew vigorously during the 16th and 17th centuries. Factors contributing to this development included a large population, religious heterogeneity and a decentralised political structure, which provided room for commercial interests. Censorship in one form

or another existed throughout, but so did loopholes. If a book or pamphlet could not be published in one particular city, or under one particular lord, there was always some other town where things were seen differently.

These conditions were even more prevalent in the Netherlands. In around 1550 there were a hundred or so booksellers and printers in the seven united provinces. A century later, this number had grown to more than 1,300.[21] The Netherlands could pride itself on having Europe's most permissive climate for the printed word. The reasons are the same as in Germany's case: decentralised rule, religious diversity and a commercialised market.

After the seven northern provinces of the Netherlands had freed themselves from their Habsburg rulers at the end of the 16th century, a particular political climate arose which was characterised by defiance against authority, religious and linguistic variety, economic prosperity and considerable provincial independence. A vigilant republicanism coupled with a capitalistic culture created a social climate that was unprecedented in the standards of the day. The Calvinists dominated, but never made up more than about 55 per cent of the population, and one historian has described the Netherlands as a society of multiple sects, characterised by pragmatic and inconsistent tolerance.[22] Earlier than in other places, public opinion became a political force to be reckoned with in the Dutch Republic. The Reformation, which brought with it a system of universal secondary schools, together with a relatively high level of urbanisation, contributed to widespread literacy among the population. At the beginning of the 17th century almost two thirds of men and one third of women could write their names, which is a methodological baseline for estimating the degree of literacy.[23]

In literature we can occasionally read that pre-censorship never existed in the Netherlands, but this is incorrect. Local censorship regulations were issued by the provincial governments. In the province of Holland, for example, a decree was issued in 1581 which – in addition to introducing measures against the practice of Catholicism – restricted the activities of printers. This decree, which was renewed and made more stringent in 1585, 1587, 1589 and 1594, prescribed that all printed matter be approved by the authorities. No changes could be made to an approved text, the publication permit was to be printed in the book, a copy was to be submitted for scrutiny, and the name of the author and printer were to be specified along with the place and year of printing. The authorities also introduced a printer's oath.[24] The same sorts of restrictions that existed in other countries at around the same time, in other words – but it proved harder to apply such restrictions in a confederation of independent provinces. If a

publication was forbidden in one province, the author could easily take his manuscript to a printer in a different province, as the assessment of the text might well be different there. Commercial considerations often trumped political ones. Sometimes printers called attention to the fact that a book had been banned in one province in order to stimulate demand for it in another, or that they expressly sought a ban for the same reason. Each of the seven provinces furthermore guarded their freedoms jealously, and if the joint assembly of the provinces, the States General, banned a publication – which happened less frequently – individual provinces might ignore the ban in order to demonstrate their independence.[25]

In the mid-1650s the authorities in Holland accepted the consequences of the de facto ineffectiveness of the regulation on pre-censorship. Printers continued to be required to submit copies of their production after it had been printed, but permits were no longer required before printing could begin. The printers' oath was abolished, but instead bookbinders and booksellers had to vow not to deal with forbidden literature. This new and general regulation was followed by an increasing number of additional ordinances with targeted restrictions – bans ensued on the publication of official documents, heretical statements, libellous publications and so on. The States General replicated the general regulation and recommended, in its own name, that it be adopted by the other provinces. Friesland, however, chose to maintain pre-censorship.[26]

The United Provinces, and Holland in particular, came to appear – at the time as well as to posterity – as a bulwark of freedom of expression, but as outlined above this was not a view without reservations. Even if tolerance was greater than in many other places, it was not absolute. Above all, it was established by practice rather than in legislation and could therefore be restricted at any time. All the provinces had regulations that restricted freedom of expression, and bans were regularly issued on specific subjects and printed matter, for which indictments could thus be brought retroactively. In other words, there was no guaranteed freedom of the press. Censorship was negligible in history, geography, natural sciences and other areas of learning. Of the books banned by the States General or the provincial governments, more than half were political in nature and just over a third had religious content. When works by philosophers such as Hugo Grotius, Thomas Hobbes and Baruch Spinoza were blacklisted it was because they ventured into either of these areas. Sanctions ranged from fines and confiscation to banishment and corporal punishment. In rare cases, capital punishment was inflicted.[27]

The Netherlands' reputation as liberal and tolerant is not due primarily to its domestic book production, but to its production for the foreign

market. Holland in particular became a hothouse of European book production due to its large number of competing, and not too scrupulous, printers. In Amsterdam, controversial literature was printed under alleged publishers' addresses in Paris, London and Germany. Montesquieu's *Lettres persanes*, for example, was printed in Holland in 1721, with Cologne as the stated place of printing. Books were smuggled via ports in the Netherlands to distant locations all over Europe, where they supplied local markets with everything from politically radical to pornographic reading matter.[28] Still, even in the Netherlands there were limits, and prohibitions were periodically promulgated against the printing of books that were too outré and therefore could harm the Netherlands' relations with foreign powers. Temporary publication bans were also sometimes imposed on periodicals during particularly critical phases.[29]

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Paradoxically enough, the history of press freedom, unlike that of censorship, has been more about special interests than principles. The right of every person to express their view openly and without impediment on any matter they choose has not been much defended. Rather, people have defended a market interest or asserted the right to express their own view at the expense of that of others. Censorship, by contrast, has been more based on principle, defending absolute values, which is because it has usually been carried out by those in power, who have been able to back their claims to interpretative privilege with force. With that kind of authority, the ambitions of censorship have extended beyond the suppression of undesirable opinions. Quality control has always been a significant part of official censorship: the information that is spread must be presented correctly. Despite the absolute claims to truth made by both religious and secular authorities, the fundamental premise of censorship has been that very few of those in power have, in fact, had such faith in the force of their convictions that they have dared to have them openly confronted by other views. In a religious society based on authority there is little room for public doubt, and a reasoning attitude is unbeneficial, perhaps even subversive. Different powers that be have varied in their sensitivity to different expressions, but in the early modern era religious unity was the aim in all European states. Religion was the *viniculum republicæ*, the bond that held society together. Without it, even individual morality was considered an impossibility. When the duty of confession was occasionally eased during the 16th and 17th centuries, this was because of compelling circumstances and not due to conviction. The same can be said about censorship. In the

Netherlands, the boundaries of what was passable were more generously drawn than in other countries, but it was never a matter of manifest tolerance. Still, the Netherlands – and to some extent Germany and Switzerland – did manifest diversity in several areas, and in practice this turned out to promote a more open social climate. The general tendencies of these ways of reasoning were clearly illustrated during the English Revolution of the mid-seventeenth century.

English pioneers

The English Revolution 1640–1660 was a response to the autocratic tendencies of Charles I. It was fuelled by religious divisions and led to a more stable position for Parliament, strengthened civil rights, civil war, revolutionary schisms, the execution of the King, a republic, a dictatorship and finally to the restoration of the monarchy. The term 'English revolution' is controversial, but is used here because it covers the entire twenty-year period and because our interest reside in the ideas that came to be expressed.

Just as in the revolt in the Netherlands, the English Revolution led to the overthrow of the old order without any new actor being able to take over the reins of power and make immediate claims to authority. The confrontational balance of power that ensued provided room for diverging views on major social issues. Naturally there were monarchists and others who were firmly rooted in the traditional world order. Of particular interest, however, is the republican faction which saw the state as an expression of the popular will and not as a link in a divine chain of command. They made use of terminology lifted from familiar Roman civil law, but the discussion could now move beyond theory and be applied to concrete circumstances. For just a moment during the revolutionary upheaval, great opportunities appeared to open up.[30]

Censorship in England

During the first few years of the revolution, English printing presses could operate pretty much without restrictions. England had had a pre-censorship regime in the same way that other countries had, albeit with the idiosyncrasy that the King had delegated most of the inspection duties to the London printers' livery company, the Stationers' Company, which was controlled by the Crown's special courts, the Star Chamber and the Court of High Commission. The Stationers' Company issued licences both for

printers and for individual books, thereby regulating the market and exercising censorship at the same time. The Long Parliament, which assembled on 3 November 1640, immediately began to examine miscarriages of justice perpetrated by the royal courts. This led to the abolition, in July 1641, of the Star Chamber and Court of High Commission, and an ensuing vacuum that printers could make the best of. The civil war that broke out in 1642 exacerbated the disarray, and when Parliament attempted to take control the following year, the printers had grown used to their new freedom. Matters were further complicated by the lack of unanimity among those now in power. If the lower house had a printer arrested, the upper house could have him released, and even within the chambers there were conflicting wills.[31]

The Commission that examined the royal miscarriages of justice is interesting because, unusually, it considered the principles in play rather than the factual content of printing cases. It reviewed, among other things, the indictments of four learned authors who had been sentenced to a particularly harsh punishment: they would have their ears cut off and be pilloried in a public place before being jailed for life. When the Commission presented its report to the Lower House, it paid no heed to the contents of the indicted authors' publications. Instead it focused on the fact that they had been deprived of the fundamental civil rights guaranteed to every English subject under the Magna Carta.[32] Still, its tolerance was far from limitless. When the Commission did go through the books which had been seized by the Star Chamber, they were divided into three categories: good books, which could be sold or returned to their owners, books which could only be sold to select persons, i.e. persons of learning and sound judgement, and superstitious books which ought to be thrown on the bonfire. All Catholic writings belonged to the third category.[33]

It was evident that the interruption to censorship that had occurred would not last. It is a consistent pattern throughout the history of press freedom that unregulated printing presses do not produce literature and debate whose quality and profundity lives up to their advocates' expectations, but rather to those of their maligners. The idealists have found that authors and the public have not been equal to the faith invested in them, and the pessimists have found their fears confirmed. Almost immediately, Parliament began receiving complaints from individual citizens regarding the many vulgar, subversive and defamatory pamphlets that were pouring out of the printing houses. Printers themselves bemoaned all the illicit prints produced in the unregulated market, to the detriment of their financial interests. When Parliament on 14 June 1643 passed a new Licensing Act, which reinstated pre-censorship, this had been keenly encouraged

by London's privileged (licensed) printers. Under the new law, they were able to strengthen their control over the book market in several respects.[34]

John Milton's *Areopagitica*

The renewal of pre-censorship provoked the author and Puritan John Milton into writing a speech in defence of an unregulated press. His *Areopagitica* – the name recalled a court of law in ancient Athens – was the most thoroughgoing attack on censorship yet seen, and it would retain that position for a considerable period of time. It was written in the form of a speech before Parliament, but it was never read out in any political forum, nor was it a rejoinder in day-to-day politics. (The oldest known copies are dated November 1644, a year and a half after the introduction of the new printing restrictions.)

John Milton.

The speech opens with a historical review of the ancient Greeks onward. Not unexpectedly, it led to the conclusion that censorship and suppression of opinion were, to all intents and purposes, a papist invention. The speech must primarily be seen in a religious context – Milton also spoke about science and literature, but had hardly anything to say about the formation of political opinion. He expressed himself with a combative righteousness that was typical of a still-struggling Reformation: 'Who ever knew Truth put to the worse, in a free and open encounter?'[35]

As long as people were allowed to freely ponder the religious mysteries, Protestantism would infallibly be victorious – but Catholicism fettered human reason. If not everyone can agree, then Milton asked whose view should prevail? It was more rational and more Christian for many to be tolerated than for everyone to be compelled, was his reply. But he drew a line at papism and superstition: 'I mean not tolerated Popery, and open superstition [...] but those neighbouring differences, or rather indifferences, are what I speak of'.[36] Thus tolerance extended only to proximate Protestant doctrine. Still, Milton's distrust of Catholics was defensive rather than confessional. For him, papism was a cuckoo in the nest that would not hesitate to eradicate both competing creeds and secular institutions. Defensive mechanisms were therefore required. Tolerance could not em-

brace the intolerant. Milton's view was perhaps not equitable, but it was principled.

In any case, the reason *Areopagitica* is remembered today is not its rather verbose diatribes against Catholics, but some cogent arguments and phrases that have continued to resonate throughout later debates about press freedom. A wise person can derive more from a paltry pamphlet than a simple-minded person can from the best and most thorough book. How, then, can a publication do any harm in either case, Milton asked. Or if bad books really did corrupt the mind, how would censors be found who could endure their task? And could you trust censors unless they were the most distinguished of men, with the most excellent knowledge in all areas of learning? For who would want to read a book in which the pupil has corrected the teacher? Most famous, perhaps, is the statement that he who kills a man kills a reasonable creature, but he who destroys a good book kills reason itself.[37]

Milton did not advocate unlimited freedom of expression; it was pre-censorship he was opposed to. Fighting undesirable ideas with censorship was like shutting the garden gates to keep the crows off the lawn, he wrote aphoristically. Even if, at a pinch, he could accept anonymous authors, his view was that at least the printer must always be named, in order that he might be held responsible for anything that violated morality and general law.[38]

A revolution in social thinking

Many of the ideas expounded during the English Revolution were clear indications that a fundamental shift was occurring in European social thinking. In order to understand this, we need to go back to the concept of liberty and to the opposites formulated in the introduction. As we have seen, the idea that man, as a social being, was subject to the state, and that the common good always took precedence over the individual's interests, existed even in antiquity. Beyond the liberties that the state could allow, there was no natural private sphere. It followed from this that man's relation to the state was about obligations rather than rights. Regardless of whether he was a citizen or a subject, he was at the state's disposal, and self-sacrificing patriotism was one of the Roman virtues embraced by early modern Europe.[39]

For the same reasons, religion was a social concern and not a private matter. All traditional power relationships were top-down, and religious truths were not for ordinary folk to ponder, but merely to memorise in appropriate doses. The Reformation brought no change in that respect; the

Aristotelian-Lutheran views that dominated in Sweden during the 16th and 17th centuries, for example, were not less but more dogmatic than earlier doctrines. In the longer term, however, the Reformation delivered a death blow to the old world view since it contributed to breaking up a monolithic system of thinking and showed that several different approaches were possible. Things got really revolutionary when forces within different parts of Christianity began to argue that the small differences that existed between the creeds were less significant than their similarities. This made it less important which doctrines the individual was an adherent of, eventually transforming such distinctions into becoming actually a private matter. This was a long process, but very clearly visible in many places during the 18th century.

All the related phenomena were connected. In a society with a unitary religion and a clear hierarchy between rulers and ruled, and in which individuals were obliged to make sacrifices for the common good, there was no room for freedom of expression. By contrast, a society that regarded religion as the individual's own business, where power was based on popular consent and where individual freedom and the private sphere were defended, was almost forced to recognise freedom of expression as a fundamental right. A number of processes and structural phenomena contributed to this development: the Reformation, the scientific revolution, a broader world view, economic growth and social mobility, to mention but a few. The pace of these changes varied, but by the 18th century they had together gathered such force that they were well on the way to turning the old social thinking on its head.

This was a subversive movement across a very broad front, and there were only a few clear-sighted observers who saw it coming. During the 18th century, the old and the new were mixed naturally, and it can sometimes be difficult to see the patterns. For example, the French Revolution has long been regarded, in historical consciousness, as the cause and source of many of the century's radical ideas – when in fact it was a symptom of shifts which had long been taking place right across Europe, including in Sweden. The occurrence of highly radical political changes during the final phase of the Age of Liberty therefore does not mean that there was an exceptional climate of ideas in Sweden. The decisive difference was the republican form of government, which permitted – and more so than in many other places – that the current Enlightenment ideas were actually turned into political reforms. A few examples can serve to illustrate the development of the discussion about censorship and press freedom in 18th-century Europe.

Pre-censorship abolished in England

John Milton's *Areopagitica* has exerted a lasting influence on the debate about press freedom in Europe, but it had few readers in its own time and did not change any of the circumstances that led to its being written.[40] The pre-censorship that was reinstated by Parliament in 1643 was more far-reaching than before and would, to all intents and purposes, be repeated on several occasions even after the monarchy had been restored in 1660. The law was provisional, and pending a major review it needed to be renewed at regular intervals. When such a renewal was to take place early in 1695, the House of Commons did not approve an extension. The list of reasons that was presented was formulated or influenced by John Locke (circumstances are unclear). He had not yet published his major work, *Two Treatises of Government*, which came out in 1698, but the arguments of the House of Commons were based on principle and natural law: man has certain innate rights that may not be violated, but that was precisely what the existing legislation on printing did. The monopoly corrupted the market and gave the licensed printers the power to appropriate authors' intellectual property and practise extortion.[41]

In other words, the right being violated was the right to property, not to freedom of expression! This fact made the great British 19th-century historian, Thomas Macaulay, note drily in a famous statement that a reform whose importance for civilisation was greater than that of the Magna Carta and England's Bill of Rights was fuelled by petit-bourgeois niggardliness, and made without proud rallying cries: 'They knew not what they were doing, what a revolution they were making.'[42] At the time it was not regarded as a major event: the same law had been temporarily repealed already, between 1679 and 1685, without social upheaval ensuing. Printing crimes could be curbed by means of the ordinary law and without the help of ineffective pre-censorship, just as John Milton had said. Crimes of blasphemy were addressed with the help of the 1698 Blasphemy Act, incendiary writings were treated as treason, libellous publications prosecuted in defamation cases in the ordinary courts, and so on. In 1737 pre-censorship of all plays to be staged was introduced. One example of political censorship was that it was illegal to write anything critical about the Glorious Revolution of 1688. Cases were brought on these grounds as late as in 1792. Jacobite views – or support for the deposed Stuarts – were regarded as high treason and in 1719 John Matthews, a nineteen-year-old printer, was executed for having printed a leaflet supporting the Stuart pretender, though he was probably ignorant of its content. That would be the last execution

to be carried out for a printing crime in Great Britain, but such executions had been quite common during the previous century. In 1729 there was a similar case that could have ended the same way, but the accused died in jail before a case had been brought.[43]

The Acts of Union in 1707 united England and Scotland into one kingdom: Great Britain. Printing restrictions had been less stringent in Scotland than in England, and Edinburgh in particular had a significant printing industry already in the 17th century. After the end of pre-censorship, the English printing industry, which had previously been concentrated to London, also grew considerably. Almost sixty new printing works opened in England during the first half of the 18th century, and expansion was even faster in the second half. London got its first daily newspaper in 1702; thirty years later it had six.[44] The British press became a benchmark for all advocates of increased press freedom, not least in France where the printing industry was strictly regulated.

This circumstance was highlighted by David Hume in a famous essay on press freedom, *Of the Liberty of the Press*, originally published in 1741. 'Nothing is more apt to surprize a foreigner,' it began, 'than the extreme liberty which we enjoy in this country, of communicating whatever we please to the public, and of openly censuring every measure, entered into by the king or his ministers.'[45]

David Hume.

Such liberty did not exist anywhere else, he continued, either in republics such as Holland and Venice or in monarchies such as France and Spain, raising the question 'How it happens that Great Britain alone enjoys this peculiar privilege'. The answer was the composite form of government, which mixed the republican and monarchical. These elements controlled one another by means of a scrupulous observance of legal procedure, in which no one could be indicted without a basis in law and no one could be convicted without conclusive evidence. Press freedom was an essential part of this constitutional balance. It brought violations and abuse of power to the knowledge of the general public, which deterred those in power from abusing their authority.[46] Although the question already seemed to have been answered, Hume wondered whether this press freedom was detrimental or beneficial. Such a liberty, he declared, is 'attended with so few inconveniences, that it may be claimed as the common right of mankind'.[47]

Natural law liberates the citizen

Hume's essay contained what may be one of the first references to freedom of expression as a human right. Philosophers of natural law in the 17th century had maintained that human beings possessed a set of innate and inviolable rights, but none of them had included freedom of expression on their lists. Samuel von Pufendorf spoke in his compendium *On The Duty of Man and Citizen According to Natrual Law*, printed in Lund in 1673, of every human being's right to remain silent, and he devoted considerable space to the right to tell untruths. A condition for making use of this right was that the untruth benefited the person telling it but did not violate anyone else's right. The first condition followed from man's obligation under natural law to preserve his or her own person.[48] But this right only existed between citizens, and not between the rulers and the ruled: the subject was not entitled to remain silent and tell untruths before those in charge. The converse, however, applied in the same way that parents were allowed to use 'a dissimulated language and fairy tales with children and their peers, so that they might understand more easily what one means, if they are unable to assimilate the naked truth'. Similarly, it was permissible to 'draw a veil of invented rumour over state secrets and councils which must not come to the knowledge of others'. The subject, however, was unconditionally obliged to tell the truth to the authorities, in the same way that an accused person before a court had to.[49]

John Locke had even less to say about this. In *A Letter Concerning Toleration* (1689) he argued for religious freedom of conscience. In *An Essay Concerning Human Understanding* (1690, or really 1689) he had pursued detailed studies of linguistic philosophy and observed that language was a prerequisite both for thoughts themselves and for the communication of the same thoughts.[50] But in neither of these nor in his major work of social philosophy, *Two Treatises of Government* (1698), did he attach any importance to the *free* word. The most he had to say about it was on the issue of legislative assemblies. Their independence and function assumed 'Freedom of debating, and Leisure of perfecting what is for the good of the Society'.[51]

We can see Pufendorf, Locke and Hume as three points along the development of the idea of a citizens' state. Pufendorf's view was that man had given up many of his natural liberties by entering into a social contract. Even if man possessed certain immunities that the state could not infringe, the public took precedence over the individual – with the implication that the people had to endure even an unjust governance.[52] While Pufendorf continued to speak of a person's obligations, Locke concerned himself with

his rights. His view was moreover that the people were entitled to rebel against a ruler who violated its liberties and rights.[53] According to Hume, finally, good society required a balance between rulers and ruled. Absolute democracy threatened to descend into lawlessness, while an absolute monarchy easily turned into tyranny. 'It has also been found, as the experience of mankind increases, that the *people* are no such dangerous monster as they have been represented, and that it is in every respect better to guide them, like rational creatures, than to lead or drive them like brute beasts.'[54] Over two generations, then, a fairly rapid progression had taken place in the view of citizens' power – and that is a picture which is confirmed by many other sources.

The British press still in check

Hume's description of British press freedom does not give the whole picture, however. As already mentioned, there were several items of legislation which made it possible to indict publications after the fact. This was particularly insidious in the absence of pre-censorship. When publications were examined beforehand and provided with an imprimatur, this amounted to approval and they were thus protected against prosecution. A publication that lacked an official sanction could, on the other hand, become the subject of legal action – frequently on dubious grounds. This was noticeable above all when it came to immoral literature and political opinion-making. Both of these categories were prosecuted on the basis of common law rather than statutory law, which made judgements open to interpretation as well as influenced by the general social mood. During the revolutionary and Napoleonic wars towards the end of the century, prosecutions of printers increased markedly and new restrictive laws were introduced. An old instrument that was increasingly used was the stamp duty on paper. It was a means with which the authorities could raise the price of newspapers and thus reduce demand among the lower social classes, which were regarded as receptive to revolutionary ideas. The abolition of pre-censorship meant that the burden of proof was shifted from the printers to the authorities, but there was never any question of a fully or even a substantially free press, as the book historian John Feather summarises it.[55]

In other words, those in power in Great Britain did not lack means of curbing undesirable political publications. Censorship had been abolished because it did not fulfil its purpose. Those who produced publications that were critical of the Government or seditious had, in any case, not sought the censors' permission, and if a publication was found to violate the or-

dinance there were no sanctions specified, so it had to be judged under common law. Attempts were made to replace the old censorship law with new ordinances, and for a brief period the state attempted to try libellous publications under the statute on high treason, but this proved too severe and too complicated for the less serious offences that were typically processed.[56] Instead the law on libellous publication was used. The official term was *Law of Seditious Libel*, which could be interpreted in various ways, and the indictments included everything from defamation to insurrection against the state. Between 1702 and 1791 at least 185 hearings were held for crimes against this law.[57] Far from all of them led to indictments, but that did not always matter. The arbitrariness that was implicit in the law meant that it could be used by political parties to subject opponents to unpleasantness and, not infrequently, to costly legal processes. Above all, the party that was currently in power harassed the opposition in this way. The Government had recourse to a special official, the Messenger of the Press, who monitored the printing houses and could confiscate equipment or destroy type forms. One victim of such political persecution was Nathaniel Mist, a printer who produced several newspapers that were critical of the Government. Between 1716 and 1728 he was the subject of at least fourteen hearings. He was imprisoned, fined and pilloried several times for his publications, and his property was seized. Faced with the threat of lifetime imprisonment, he was finally forced to flee to France in 1728, where he lived in exile until just before his death in 1737.[58] Another well-known victim of opinion persecution was Daniel Defoe, who was also pilloried and jailed on several occasions, purely on account of things he had written. Before the 1760s there were no significant changes to this state of affairs.

It may be argued that it was a step towards increased due process of law that press indictments were processed by courts and not by censors after 1695. When the offence was to do with the position and standing of Parliament, however, the legislators would occasionally undertake measures themselves. This was a clear breach of the principle of division of powers praised by Montesquieu in the idealised account of the British form of government that he gave in his *The Spirit of the Laws* (1748). Nor could such parliamentary judgements be appealed. There was a perception that only Parliament had full freedom of expression and was immune to all infringements of its rights. Backed up by this notion, it was possible to uphold a ban on printing reports of parliamentary proceedings, or even on reporting on its activities. The newspapers' way of getting around the ban was to report in great detail on parliamentary debates in invented countries, with barely concealed references to British politics, but even this ruse could be the subject of prosecution when it went too far.[59] Montesquieu

summarised the 18th-century conception of freedom in one sentence: Liberty is the right to do whatever the laws permit.[60] But not even in exemplary Great Britain was this liberty guaranteed.

The British debate becomes radicalised

Like so many others, David Hume eventually changed his position on press freedom. The long final argument with which he in 1741 had elevated press freedom to a human right was omitted in the 1770 edition, which was the last one to be published during his lifetime. The four pages were replaced by a single, short paragraph:

> It must however be allowed, that the unbounded liberty of the press, though it be difficult, perhaps impossible, to propose a suitable remedy for it, is one of the evils, attending those mixt forms of government.[61]

The debate about press freedom had been substantially radicalised, and positions polarised, in Great Britain during the 1760s not least due to the influence of the publicist John Wilkes. In his periodical *North Briton*, first published in 1762, he challenged the political restrictions on the press. The position related to constitutional law had previously been about asserting the independence of Parliament vis-à-vis the monarchy. Wilkes and his supporters were fighting to make Parliament accountable to the voters, and they did this by referring to public opinion. Wilkes challenged the secrecy surrounding parliamentary deliberations, printing detailed reports of the discussions in both chambers. An attempt to indict some printers who had violated the ban had to be withdrawn in 1771, following forceful popular protests. The members of both chambers realised that they lacked the necessary coercive measures to uphold the ban, and rather than expose their impotence they chose henceforth to turn a blind eye to the press reports. Still, no formal regulation making it legal to report from Parliament was ever issued.[62]

These developments had many parallels with the situation in Sweden at the same time. In both cases there were powerful forces that wanted to break the corporatist privacy of the legislative assembly and place it under the control of the people. The means to this were increased transparency and an appeal to public opinion. In Great Britain application of the law was softened in practice, just as in 1695, but it was never a matter of any formal concession. The fact that what was resolved by means of altered practice in Great Britain was achieved by means of a constitutional law in Sweden is a reflection of the two countries' differing constitutional traditions. One consequence of this was that while Parliament accepted that British news-

papers reported on parliamentary debates, the general public did not – as was the case in Sweden after 1766 – have access to its, nor to the Government's, records of deliberations. In that sense, at least, Gustav III was right when he maintained that 'press freedom is more extensive in Sweden than in any other country, more so even than in England', even after he had repealed the 1766 Press Freedom Act.[63]

France takes the middle ground

As has been shown, free expression did not have an ideal habitat in Great Britain, where conditions did not involve any statutory freedom of writing or of the press. Yet the country was the foremost exemplar in these matters. Most countries practised censorship more or less on the French model. But in France, too, censorship included several features which may appear surprising.

France had an extensive system of royal censors attached to the *Direction de la libraire*, which, much like the corresponding office in Sweden, reported to central government. But whereas the Swedish censorship office that existed between 1686 and 1766 was held by a single official, in France there were 56 of them in 1700, and their numbers grew to between 122 and 189 during the period from 1750 to 1789.[64] The censors were learned men with knowledge of the different arts and academic disciplines, and many of them were themselves scientists and writers. A broad range of knowledge was required, since their task was not only to be vigilant of political agitation, but even more to maintain literary and scientific quality. The lion's share of their work was of the kind which has since been taken over by publishers' readers and editors.

An officially sanctioned publication was provided with a royal approbation, which could be interpreted as a recognition or even as a recommendation. The standard of the work was therefore a matter which ultimately affected the good name of the king. Another important function was to protect copyright and the financial interests of the printers. Copyright was long something intended for printers rather than authors. In England the printers' oligopoly had ended in 1695, and new actors began to produce cheap pirate prints of old classics as well as new, original works. The printers who had previously had licences therefore petitioned the government, which in 1709 issued the world's first copyright law. New books were henceforth protected for fourteen years, and this period could be extended as long as the author was alive. In France, equivalent legislation was not passed until 1777. Before this date the printers were granted privileges re-

garding original works, normally for a period of ten or twenty years, and sometimes for longer. During this period it was forbidden for anyone else to print the same text. Occasionally the censors would protect a subject instead: if there was already a book that dealt with a certain issue, approbation might be denied to competing books on the same theme.[65]

French censors were in the habit of carrying out rather extensive edits of manuscripts. They could then make one of three decisions: they could ban the book, they could approve it or they could give it what was known as tacit consent. In the latter case the book did not receive any approbation (meaning that it lacked legal protection as well as copyright protection), but censors had turned a blind eye to its shortcomings. Books published in this way were often furnished with false printing information from abroad, even if they were printed in France so that their quality shortcomings need not embarrass the Crown, but the income from their sale would still go to French printers.[66]

Many of the French censors were themselves enlightened souls who did what they could to mitigate the system. A famous statement by the former censor, Chrétien Guillaume de Lamoignon de Malesherbes, pointed out that a person who read only approved literature would be living intellectually a century behind their times.[67] But even if many writers were treated with a certain benevolence, their work situation was hardly ideal. The arbitrariness of the French censorship institute was described in deeply satirical terms by Beaumarchais in *The Marriage of Figaro*. He wrote:

> There has been established in Madrid a system of free trade, which extends even to a free press, and that, provided I do not write about the government, or about religion, or politics, or ethics, or people in power or with influence, or the Opera, or other theatres, or about anybody connected with something, I can print whatever I choose under the supervision of two or three censors. This sweet liberty I naturally want to make use of […].[68]

A new era

At the beginning of the 18th century, European social thinking maintained more or less the same form it had had since late antiquity. It was a hierarchical, corporative, static view of society motivated by religious belief. Earthly life had the next life in its sights, society as a whole was more important than its parts, and the main goal of politics was to maintain the divinely inspired balance between the corporations. By the time the century was approaching its end, this scheme of things and been turned on its head. Religion was well on its way out of constitutional law, the individual

was the smallest component part of politics and he possessed a number of self-evident rights that the state could not violate, society was seen as a dynamic entity that was slowly but fairly surely being ennobled and becoming a better place for all its inhabitants. This change can be summarised in a single sentence: subjects were becoming citizens. It was only natural that views on people's right to information and to express themselves also changed.

How can we explain this sweeping change? The interpretation that has dominated is the one proposed by Jürgen Habermas, the German sociologist. In his dissertation entitled *The Structural Transformation of the Public Sphere* (1962) he attempted to explain how the private sphere arose and was separated from the public sphere. He sees two major structural transformations as decisive: the rise of nation states and the emergence of capitalism. The former brought a professionalisation and regulation of state authority, with clearly defined limits for its interventions. The latter created an autonomous civil society which demanded that governments provide certain services and utilities. The relationship between rulers and ruled was no longer a one-way communication from the top down, but negotiations with demands and counter-demands from both parties.

At the macro level we are concerned with here, Habermas's interpretation can be accepted without demur, but it needs a historical annotation. The secularisation of constitutional law was a fundamental prerequisite of the changes in social thinking that occurred during the 18th century, and this is never satisfactorily explained by Habermas. It has been pointed out above that in the Aristotelian-Christian (scholastic) world view, religion, science and social thinking formed a whole. If one part were removed, the entire mental structure would soon collapse. The scientific revolution was the first big blow. Piece by piece, Aristotelian natural philosophy was removed, until nothing remained. René Descartes's mechanistic world view amounted to a challenge that also heralded God's departure from the natural sciences. Of the greatest significance for the secularisation of constitutional law, however, was natural law theory.[69]

Natural law also originated from antiquity. When the Romans built their empire they came across a number of different norm systems, but certain rules of law appeared to be the same among all peoples. Nowhere was it permitted to steal or murder, marriage between certain blood relations was banned everywhere, and so on. This appeared to reflect an innate or natural conception of justice – which in that case must be of divine origin, it was reasoned. But the Romans were polytheists and pragmatists, and cared little about what gods were being worshipped – one particular religion might be right, but it was not easy for a mortal to know which one.

The intentions of the gods were inscrutable, but they were reflected, and could be observed, in nature and morals. Thus Plato had explained the relationship between the inconceivable world of ideas and its observable shadowplay in the sensible world. The tolerant Romans permitted many local justice systems in their multi-ethnic empire, as long as they did not contradict the shared natural laws.

This tripartite division into God's law, nature's law and civil law (positive law) was widely adopted during the 18th century. Natural scientists such as Carl Linnaeus were adherents of what was known as physicotheology, which maintained that God's plan for the world, while inscrutable, could nonetheless be studied in nature. Lawyers and political scientists likewise said that God's intentions were inaccessible to human reasoning, but had made an imprint in natural law. As long as civil law corresponded to natural law, it would also be conveyed in concord with God's will. Thus God could be left out of jurisprudence, which could nonetheless be said to rest firmly on Christian foundations.[70] Considerable effort was instead expended on examining the rules of natural law, and it was these that came to be defined as civil liberties (civil rights) in the 18th century. They included the right to your life and your person, the right to ownership and to improve yourself; sometimes freedom of conscience was also included. To this catalogue of rights were soon added the right to think, speak and write freely.

Henning Adolf Gyllenborg.

These were not merely academic theories, they were concrete arguments used in political discussions. Peter Forsskål's *Tankar om borgerliga friheten* (Thoughts on civil liberty, 1759), one of the clearest expositions of natural law in Sweden (see Ere Nokkala's contribution), reveals even in its title its dependence on this tradition of thought. Arguments from natural law had been important in the formulation of the 1720 Instrument of Government, and they continued to ring like a keynote throughout the Age of Liberty.[71] Writers such as Johan Fredrik Kryger, Anders Schönberg, Forsskål as mentioned and above all Anders Nordencrantz, had been arguing for several decades in favour of easing censorship, and as early as in 1739 Henning Adolf Gyllenborg, a secretary of state, had argued before the Riksdag that a 'free people should be permitted a free press'.[72] When

the 1766 order on the freedom of the press was drawn up, it was done after long, ideological and opinion-forming preparation.

In this respect, circumstances contrasted sharply with those in Denmark, which would be the second country to introduce statutory press freedom. Constitutionally, Denmark had the most rigid autocracy in Europe, and the printed word was under full royal control. The country was therefore unprepared when Johann Friedrich Struensee, in his first cabinet order, introduced unlimited press freedom on 4 September 1770. Struensee was the personal physician of the mentally unstable Christian VII, and was for sixteen months the de facto ruler of Denmark in his name. Struensee was a radical man of the Enlightenment, inspired by the Dutch 'arch-heretic', Baruch Spinoza, and he wanted to turn Denmark into an enlightened model state.[73]

Even if Denmark was a strict autocracy, it was not unaffected by the intellectual currents of the time. Jens Arup Seip, a Norwegian historian, has written an influential essay about the development of an 'opinion-ruled autocracy' that demonstrated responsiveness to public expressions of opinion. This description has recently been questioned in a thorough study by Øystein Rian, whose view is that the connection really went the other way: public opinion appealed to the goodwill of the monarchy as a form of invocation. Danish absolutism fed a self-censorship so strong, Rian argues, that it is best likened to brainwashing: it was only by demonstrating due subservience that a writer could take part in the public discourse.[74] In accordance with the arguments in this outline, it may in any event be noted that Denmark did not escape the influence of the radical ideas that were sweeping across Europe even before the French Revolution.

Struensee's unlimited press freedom did not last long. After a tentative beginning, publication of small-format printed matter in particular increased sharply towards the end of 1770. A large share of these pamphlets were published anonymously, and from having initially praised Struensee's reforms they soon turned increasingly critical of his person as well as his policies. On 7 October 1771, a royal decree was issued that once again made writers and printers responsible for their publications. Lampoons and seditious publications would henceforth be tried under common law, which in practice meant that violators of the press laws could be sentenced to death. Struensee was deposed on 17 January 1772, and the new regime imposed further restrictions on press freedom. When political publications were banned on 20 October 1773, the party was irrevocably over. Control of publications then lurched back and forth, with periodically very strict legislation, until Grundloven (the constitution) of 1849 and the press law of 1851, which set the printed word free.[75]

Subsequent examples of manifest press freedom came from the United States and France, and were in both cases the consequence of revolutionary upheaval followed by declarations of rights. The United States declared its independence from Great Britain in 1776 and adopted a new constitution in the spring of 1788. Freedom of the press and of expression were not mentioned in either of these documents, but were presented in a Bill of Rights that was adopted by Congress in September 1789 and ratified by the states in December 1791. The first amendment forbade Congress from adopting any law 'abridging the freedom of speech, or of the press'.[76] In France, the corresponding freedom was included as Article 11 of the Declaration of the Rights of Man and of the Citizen that was adopted by the National Constituent Assembly in August 1789. 'The free communication of thoughts and of opinions is one of the most precious rights of man', Article 11 stated. 'Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by law.'

This freedom which, at the beginning of the 18th century, was not known in any country had, towards the end of the century, come to be regarded by many as a fundamental human right. Poland introduced a law on freedom of expression in 1775, and in 1791 enshrined in its constitution a short-lived freedom of the press.[77] Even in autocratic states such as Prussia and Austria censorship was cautiously eased, but the arbitrariness of its application remained. It took a revolutionary transformation, or a form of government in which citizens had already been granted an active role, to turn fashionable philosophy into practical policy. In many places the revolutionary and Napoleonic wars brought a temporary setback in the fight for freedom of expresson, but in the Europe of new constitutions that followed on the Congress of Vienna in 1815, press freedom was an increasingly self-evident reality.

The road to press freedom and to the free formation of opinions was still a long one in most countries, to be sure, but these freedoms had now become an issue that those in power needed to engage actively with. Previously, the right of rulers to control the mental and spiritual life of the ruled had been taken for granted, and required no justification. This was no longer the case.

Notes

1 On the ideological development in the Age of Liberty: Nordin 2003. On the radical transformations of the late eighteenth century: Israel 2010.
2 *En Ärlig Swensk* 1755, pp. 269, 57.
3 Lindberg 2006, pp. 171–194.
4 Nordin 2006.
5 Nordin 2003; Nordin 2009, pp. 25–58.
6 This should really also include notions of freedom of movement, freedom of assembly, freedom of association etc. These freedoms have often developed parallel with freedom of expression and of the press, but this brief overview does not provide scope for exploring them.
7 Hansen 1999, p. 90; Hansen 2012, pp. 22 f.; Aristotle, *Politics*, 1297a.
8 The Polish Parliament's famous *vox liber* was a given for free Poles, i.e. the aristocrats, but hardly for ordinary subjects; Grześkowiak-Krwawicz 1997, pp. 102 ff.
9 Plato 2006, *The Republic*, 558; Aristotle 1996, 1301b, 1337a.
10 Söllner 2008, pp. 36–39.
11 Sundén 1925, pp. 112–114.
12 Voltaire 2015 [1763], pp. 62 ff., 66 ff.
13 Bély 2003, p. 217; McKitterick 2003, pp. 151–165.
14 Steinberg 1983, pp. 12–20; Lyons 2011, pp. 56 ff.
15 Kirchhoff 1851, pp. 42–44; Kawohl 2008.
16 Kawohl 2008.
17 Hirsch 1973, pp. 248–251.
18 Mullett 2004, pp. 54 f., 62 f., 137.
19 Czaika 2014, pp. 78 f.
20 Charles V's decree of April 1550, quoted from *Geschichtliche Grundbegriffe*, 4, 1978, p. 903 (Sw. transl. JN; Eng. transl. by translator). Cf. Chartier 1996, pp. 66–68 about the corresponding regulations in France.
21 Harline 1987, pp. 72 ff., 22
22 Schama, 1988, pp. 58–62.
23 Harline 1987, pp. 59 f.; Israel 1995, pp. 686–690.
24 Groenveld 1987, pp. 67, 69. Cf. Harline 1987, pp. 98, 128, 138 f.
25 Steinberg 1983, p. 235; Groenveld 1987, p. 80; Israel 1995, pp. 495 f., pp. 788–790, 816 f.
26 Groenveld 1987, pp. 71–73.
27 Groenveld 1987, pp. 74–80; Harline 1987, pp. 124 ff.; de Bruin 2011, pp. 93 f.
28 Steinberg 1983, p. 232 ff.; Mendle 1995, p. 312; Melton 2001, p. 66; Mathis & Mathis 2015.
29 Groenveld 1987, p. 72.
30 See Skinner 1998.
31 Siebert 1952, pp. 165–169; Thomas 1969, pp. 12 f.; Mendle 1995, pp. 309 f., 313 ff.; Clegg 2008, pp. 208–232.
32 Siebert 1952, pp. 121–126; Clegg 2008, pp. 164–182, 215 f. The four authors were Alexander Leighton, John Bastwick, Henry Burton and William Prynne.
33 McKenzie & Bell 2005, p. 30.
34 Siebert 1952, pp. 182 f.; Mendle 1995, pp. 322–332; Melton 2001, p. 47; Clegg 2008, pp. 227 f.

35 Milton 1959 [1644], p. 561. The Spelling has been modernized in all quotes from this work.
36 Milton 1959 [1644], p. 565.
37 Milton 1959 [1644], pp. 492, 520 f., 530–534. Milton embedded the statement in a religious context: man, the reasonable creature, is an image of God; to kill reason is to kill the image of God. Hence: if you kill reason, you kill the divine in man.
38 Milton 1959 [1644], pp. 520, 569.
39 Lindberg 2006, pp. 176–184, 190.
40 Worden 1987, pp. 45 ff. One example of the long-term impact of *Areopagitica* is the paraphrase by Mirabeau, the French revolutionary politician: *Sur la liberté de la presse, imité de l'anglois de Milton*, from 1788, reprinted 1789 and 1792.
41 Astbury 1978, in particular pp. 307 ff.
42 Macaulay 1855, p. 541.
43 Thomas 1969, pp. 41 f.; Melton 2001, pp. 32 f.
44 Colley 1994, pp. 40–42.
45 Hume 1987 [1741–1770], p. 9.
46 Hume 1987 [1741–1770], p. 12.
47 Hume 1987 [1741], p. 604.
48 Pufendorf 1991 [1673], I:V:1–4, 18–19, I:X:4–5.
49 Pufendorf 1991 [1673], I:X:9–10, II:XVIII:7.
50 Locke 1690, Book III.
51 Locke 1988 [1698], II:215.
52 Pufendorf 1991 [1673], II:XVIII.
53 Locke 1988 [1698], II:226–228.
54 Hume 1987 [1741–1770], pp. 604 f.
55 Siebert 1952, pp. 380–392; Thomas 1969, pp. 129–152; Feather 1988, pp. 88–92.
56 Hanson 1936, pp. 7 ff.; Phifer 1980; Hamburger 1985, pp. 714–723.
57 Hamburger 1985, pp. 724 f.
58 Chapman 2014.
59 Thomas 1969, pp. 44–47.
60 Montesquieu, *The Spirit of the Laws* 1748, XI:3. Cf Locke's similar notion of liberty: Locke 1988 [1698], II:22.
61 Hume 1987 [1741–1770], p. 13.
62 Siebert 1952, pp. 356–363; Marcham 1960, p. 236; Hellmuth 1990, pp. 471 ff.; Melton 2001, pp. 36 ff.
63 Gustav III writing to Voltaire in May 1774, after Proschwitz 1992, p. 145. There is no evidence that the letter was actually sent.
64 Birn 2012, pp. 3, 12.
65 Melton 2001, pp. 137–143.
66 Birn 2012, pp. 3 f.; Darnton 2014, pp. 30–37.
67 Darnton 1996, p. 8; Israel 2009, p. 65 f.
68 Beaumarchais 1991, pp. 139 f. [English translation as quoted in *Book History – Ezra Greenspan, Jonathan Rose – Google Books, p. 271*]. The play was written in 1778, but only had its first performance in 1784.
69 Voltaire 2015 [1763] follows this line of argument throughout.
70 John Locke was possibly the first to argue for a separation of the religious and political spheres: Locke 1689, p. 6.
71 Nordin 2003, pp. 63 f.; Nordin 2009, pp. 27, 85 f.

72 *Sveriges ridderskaps och adels riksdags-protokoll*, 11: 1738–1739, p. 349; Gyllenborgs memorandum on press freedom, annex 20.

73 Laursen 1998; Laursen 2000; Horstbøll 2005; Amdisen 2012, pp. 147–150. Langen 2008 p. 323 claims that it was Christian VII who was personally behind press freedom. This view has scant support among other researchers.

74 Seip 1958; Rian 2014, pp. 40–42, on self-censorship e.g. pp. 15, 51, 169. The gist of Seip's argument had already been put by Edvard Holm in 1888. He also published a classic study of Danish press freedom: Holm 1885.

75 Holm 1885, pp. 6 ff.; Rian 2014, pp. 179–193.

76 Martin 2001, in particular pp. 125–154.

77 Grześkowiak-Krwawicz 1997.