

# Jeremy Bentham on Freedom of the Press, Public Opinion, and Good Government

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## **Abstract**

Two major defences of the freedom of expression were articulated in the nineteenth-century utilitarian tradition. Jeremy Bentham (1748–1832) was concerned with establishing the freedom of expression, and in particular the freedom of the press, as a protection against despotism and thereby furthering his schemes for the introduction of a democratic form of government, while John Stuart Mill (1806–1873) in *On Liberty* famously defended freedom of expression on the grounds that it promoted the discovery and maintenance of truth. Nevertheless, Bentham and Mill both retained deep philosophical commitments to truth and utility, and their different approaches are better understood as complementary rather than contradictory and as reflecting the circumstances in which they were writing. Taking as a starting point the connections between the Nordic countries and these two thinkers, this article examines and compares Bentham's and Mill's work on freedom of expression.

## **Keywords**

despotism, public opinion, utilitarianism, truth, freedom of expression

In a contribution elsewhere in this issue, Lars Björne shows that, in the Nordic countries from the mid-eighteenth century, laws were passed protecting the freedom of the press, though at the same time imposing restrictions on the exercise of that freedom; that, in practice, governments often pursued repressive measures against critics, though the courts were not always willing to convict and, where conviction was obtained, tended to impose moderate sentences; and that, mainly in response to the growth of trade unions, governments and the courts generally become more hostile to press freedom in the second half of the nineteenth century. Advocates of freedom of the press might have drawn on the English tradition of classical utilitarianism, and most notably the writings of Jeremy Bentham (1748–1832) and later those of John Stuart Mill (1806–1873), for arguments in support of their position, and to some extent would have had the opportunity to do so, as we shall see, through translations of some of their relevant works. For their part, references to the Nordic countries are scarce in the writings of both Bentham and Mill. Bentham was interested in the Danish conciliation commissions, established in 1795, which he cited approvingly as an alternative to the adversarial system of procedure which characterized the English Common Law courts (Bentham 1827: i. 423–426, 560–562 n.). Mill was pleased to learn about the introduction of proportional representation in the Danish Constitution of 1863 (Mill, J.S. 1977b: 465–466 n.), and later corresponded with and in 1870 met the Danish scholar Georg Morris Cohen Brandes (1842–1927), who had arranged the translation of his *The Subjection of Women* into Danish in 1869 (Mill, J.S. 1972: 1699 n.). In his account of his meetings with Mill, Brandes does not mention any discussion of the freedom of the press. He does, however, explain that the overwhelmingly dominant tradition at the University of Copenhagen, where he was educated, was Hegelian, and that, ‘of English philosophy ... we only heard as of a system that had long since been overthrown, and where the death-blow had been delivered to it by Kant’ (Brandes 1886).

Brandes’s account is confirmed by the Swedish economist Knut Wicksell, who, writing in 1917, noted that, until the 1880s, ‘the writings of British philosophers were unknown in our country’ due to the lack of English teaching in grammar schools and because the empiricists

and materialists Locke and Hume had supposedly been refuted by Kant (Wicksell 1999: 236). A significant change, however, had taken place with the publication of a new translation of Mill's *On Liberty* in 1881 (Mill, J.S. 1881), superseding a defective translation that had appeared in 1865 (Mill, J.S. 1865). The new translation was 'a real event':

it can be safely asserted that within the circle of more or less adult young people (incidentally, a rather limited circle) conventionally known as 'the Eighties', Mill's *Liberty* became the original text and code in which notions we had previously but dimly sensed received clear illumination and binding logical coherence. That the suppression of views and opinions is an evil under all circumstances, even and not least if the suppressed view is false; indeed, what is more, that experiments with 'new ways of living' are to be regarded as a gain for the human race and ought to be encouraged instead of mocked or persecuted, provided they are not directly harmful to any person – all this was rather novel at that time, not merely to the common way of thinking, but even to those who strove to reform it (Wicksell 1999: 236–237).

Mill's *On Liberty* was also published in Danish translation in 1875 (Mill, J.S. 1875) and in Finnish in 1891 (Mill, J.S. 1891). Moreover, Bentham's *Political Tactics*, which contains an important discussion of the role of publicity in the functioning of representative assemblies, was translated into both Norwegian and Swedish in 1821 and 1823 respectively (Bentham 1821 and 1823). The work had originally appeared in a French translation of Bentham's works produced by his Genevan friend and editor Étienne Dumont (1759–1829). Dumont's French version was translated, amongst other languages, into German, and it seems that the Norwegian translation was based on this German version. Given that Bentham's original manuscripts were written in English, the Norwegian version would appear to be a translation of a translation. The Norwegian translation was undertaken by P. Flor, a member of the Storting, and the Swedish translation by Johan Henrik Ritterberg (1791–1867). Bentham's other works might,

of course, have been read in the original English or somewhat more plausibly in Dumont's French recensions, of which there were five in total published between 1802 and 1828, but the strong possibility must remain that, apart from the translations, he was not read at all. Having said that, Bentham's own efforts were directed much more towards Southern Europe and South America, rather than Northern Europe, where the prospects for liberal reform appeared less encouraging.

Bentham had written 'Political Tactics' in 1788-1789, in anticipation of the meeting of the Estates General in France, with a view to advising the French on the organization of a representative assembly. He pointed out that the best means for 'securing the public confidence' in a political assembly and to ensure that it promoted the welfare of the community was to give publicity to its proceedings. Hence he suggested a series of measures, including the design of the chamber, with accommodation for newspaper reporters and members of the public, the publication of official reports of debates, and tables exhibiting the motion under discussion and regulations for the proper conduct of members, in order to ensure that proceedings were publicized both within the assembly itself and amongst the people at large. He envisaged a dialogue between legislators and people which would benefit both parties. The legislators would learn the real wishes of the people, who themselves would be better informed. Electors would have more information on which to base their choice of representative, while the representatives would be able to profit from the knowledge and expertise of persons outside the assembly. The whole point, in Bentham's view, was that 'the superintendence of the public' was the best means of ensuring that rulers did not abuse their power (Bentham 1999: 29-34, 44-51).

Throughout his career Bentham placed great emphasis on public opinion as a bulwark against oppression and misrule. In *A Fragment on Government* (1776), for instance, Bentham had noted that the difference between a free and a despotic government did not consist in the greater power that rulers enjoyed in the one rather than the other, since there was no such necessary difference, but rather in the way in which power was distributed, in the way in which it was conferred, in 'the frequent and easy *changes* of condition between governors and

governed', in the responsibility of governors, which consisted in 'the right which a subject has of having the reasons publicly assigned and canvassed of every act of power that is exerted over him', and

on the *liberty of the press*; or the security which every man, be he of the one class or the other, may make known his complaints and remonstrances to the whole community: – on the *liberty of public association*; or the security with which malecontents may communicate their sentiments, concert their plans, and practise every mode of opposition short of actual revolt, before the executive power can be legally justified in disturbing them (Bentham 1977: 485).

This was not to say that truth was irrelevant, since the point was to discover the truth about the actions of governors and their reasons for doing them, and thereupon to form an opinion as to whether those governors were justified in what they had done. As Bentham remarked: 'Under a government of Laws, what is the motto of a good citizen? *To obey punctually; to censure freely.*' (Bentham 1977: 399) He went on, moreover, to argue that there might come a point when the morally right course of action was not to obey government, but to resist it (Bentham 1977: 484).

His view that public opinion, while never perfect, would be more likely than any other organ to promote the interest of the community as a whole became a key element in his mature constitutional writings, following his commitment to 'democratic ascendancy' in 1809 and to full-blown republicanism in or around 1818 (Schofield 2006: 109–170). Unlike Mill, as we shall see, Bentham did not regard freedom of expression as primarily concerned with the discovery of truth, but rather with opposing misgovernment or, as he termed it, misrule. An extended discussion of these themes appeared in *On the Liberty of the Press, and Public Discussion*, which was written in 1820 and published in 1821. The essay was inspired by events in Spain, where Bentham feared that the liberal regime established in 1820<sup>1</sup> would be severely compromised, if not overthrown, by the arrest of his correspondent and newspaper editor José Joaquín Mora (1783–1864) for comments on the

Madrid 'system of police' and the passing of legislation which aimed to regulate public meetings called for the purpose of political debate. Bentham argued that the prosecution of Mora would destroy the liberty of the press, while the law on public meetings would destroy 'the almost only remaining check to arbitrary power' (Bentham 2012: xvii, 7). Bentham explained that his aim was to show 'how indispensable, at all times and every where, those two intimately-connected liberties – the liberty of the press, and the liberty of discussion by word of mouth – are to every thing that can, with any propriety, be termed good government'. While written with the particular circumstances of Spain in mind, the principles it espoused, he claimed, were as applicable to Britain, as well as to other countries, both at that time and in the future (Bentham 2012: 4). Bentham pointed out that in the United States of America no one could be prosecuted for anything written against government and there were no restrictions on public meetings, and yet there had been no 'disturbance' to 'public tranquillity', despite the fact that 'the people are all armed', thereby rendering resistance to government easier than in a country where the people were not armed (Bentham 2012: 8).

In relation to the liberty of the press, Bentham highlighted the general attitude of rulers in cases where they were subjected to defamation – that is where 'an individual act legally punishable, or at least disreputable' was imputed to them – or vituperation – that is where 'vague and general' accusations were made against them (Bentham 2012: 11–12). First, rulers regarded the offence as more serious and, therefore, subjected it to more severe punishment where directed towards themselves rather than towards private individuals. Second, they regarded it as more serious where directed towards the whole body of rulers or the more important rulers than against the less important officials. Third, both the judicatory and the forms of procedure where rulers were involved were often different from those where ordinary citizens were the subject of criticism. Bentham's own view, confirmed by practice in the United States of America, was 'in all those particulars, the reverse' (Bentham 2012: 12). There should be no punishment at all for vituperation and none for defamation 'unless the imputation be false and groundless', and even then only if the

accusation 'be the result of wilful mendacity, accompanied with the consciousness of its falsity, or else with culpable rashness'. There should be no separate judicatory or form of procedure, while the defendant, 'in disproof of rashness of assertion, as well as of wilful falsehood, ... should be at liberty to make proof of the truth of the imputation; and, for that purpose, to extract evidence from the person who is the subject of it, as he might from any other person at large' (Bentham 2012: 12). He continued:

For these notions, speaking in general terms, my reason is – that to place, on any more advantageous footing, the official reputation of a public functionary, is, to destroy or proportionably to weaken, that liberty, which, under the name of *the liberty of the press*, operates as a check upon the conduct of the ruling few; and, in that character, constitutes a controuling power, indispensably necessary to the maintenance of good government (Bentham 2012: 12–13).

The good produced by the liberty of the press consisted in 'the security thus afforded for good government', which would greatly outweigh any evil produced by accusations against a particular person or indeed 'any number of persons, however situated'. Furthermore, the higher the functionary, the greater would be his 'means of support and defence' to refute any allegation made against him, assuming it to be false, and the greater the advantages he would enjoy to offset against the evil he might suffer from this source (Bentham 2012: 13). In 'Securities against Misrule', which Bentham wrote in 1822 for the state of Tripoli after having come into contact with the Pasha's envoy to London, he described the way in which newspapers might be used to make accusations against misbehaving officials, present evidence, ground opinions on that evidence, and come to judgement as to guilt or innocence. Public opinion functioned in a way analogous to that of a court of law, and hence Bentham referred to it as the Public Opinion Tribunal. The Tribunal was made up of every person who took notice of a particular matter, while its opinion consisted of the opinions of the aggregate number of its members. It wielded the moral sanction,<sup>2</sup>

consisting primarily in the giving or withholding of praise and blame, and hence affecting the reputation (a source of pleasure and pain) of those of whose actions it took notice (Bentham 1990: 44–73).

Returning to *Of the Liberty of the Press*, Bentham considered the arguments that had been advanced against the liberty of the press. The first objection was that it was dangerous, since it might lead to insurrection and civil war. Bentham admitted that there was danger in liberty, but cautioned that there was more danger in power. The question was whether there was more danger where power was left unchecked by the liberty of the press or where it was so checked. The check was ‘in its greatest vigour’ in the United States of America and in Britain and Ireland, and these countries were generally acknowledged to be the happiest in the world. ‘In the Republic, this liberty is allowed by law, and exists in perfection: in the Kingdom it is proscribed by law, but continues to have place, in considerable degree, in spite of law’ (Bentham: 2012: 13).<sup>3</sup> Bentham had taken up this theme in *Book of Fallacies* (written at various points between 1809 and 1822), in which he outlined and exposed arguments that were typically used in the British Parliament in order to obstruct proposals for reform. He exemplified the ‘Sham-distinguisher’s Device’ by the distinction between the liberty and the licentiousness of the press. He noted that the two ‘distinguishable uses’ of the press were first, to ‘check ... misconduct in private life’, and second, to ‘check ... misconduct in *public* life, that is on the part of public men’ (Bentham 2015: 356). Without such a control, which operated by directing the ‘ill-will’ of the public towards the misdoers, the result would be ‘power uncontrollable, arbitrary, despotic’ in the hands of governors (Bentham 2015: 356–357). Bentham recognized that misconduct would be falsely or mistakenly attributed to particular governors, and in that case it would be proper to use the condemnatory term ‘licentiousness’ in relation to the liberty of the press. This evil was, however, a small price to pay when compared with the much greater evil that would ensue were there to be no freedom to make accusations against governors and was mitigated by the fact that the accused governor would be able to use the press in defending himself. Until rulers could adequately distinguish between just and unjust imputations, then the distinction between the liberty



and licentiousness of the press was a distinction that did not exist: 'While that line remains undrawn, to oppose licentiousness is to oppose liberty' (Bentham 2015: 357–359).

The second objection that Bentham considered in *Of the Liberty of the Press* was that the liberty of the press was needless, in that other remedies effectively prevented misgovernment. Rulers, it was claimed, were endowed with all the elements of appropriate aptitude, that is probity, wisdom, and active talent,<sup>4</sup> necessary to promote the happiness of the community, and 'with uncontroled power in the persons of the *rulers in chief*, the subject many possess an adequate security' against any misconduct on the part of their subordinates (Bentham 2012: 14). Bentham responded that rulers, like everyone else, were predominantly self-interested and so were much more concerned with their own happiness than with that of their subjects; that their wisdom would depend upon the information which only the freedom of the press could provide; and that the higher his situation, the lazier a ruler was likely to be.<sup>5</sup> Without liberty of the press, the rulers-in-chief would have no incentive to remove any incompetent or corrupt subordinates, since they would tend to have more sympathy for their 'obsequious instruments' rather than for the people at large: 'They will not be disposed to remove or punish them, merely for acting against the people's interest; much less for acting in favour of the separate and sinister interest of these same rulers: as where the rulers themselves engross or share the profit of the offence' (Bentham 2012: 14–15). Moreover, the information received from the freedom of the press would both support any formal prosecutions instituted against wrong-doing officials and bring to light such wrong-doing where it was not feasible to prosecute at law or where such prosecutions would be beset by delay and expense. In relation to the liberty of public meetings, noted Bentham, the arguments were the same (Bentham 2012: 15). He proposed that, in regard to the liberty of writing and speech on political subjects, matters should be placed upon the same footing as they were in the United States of America, and that in regard to political meetings, the people should remain at liberty to meet in order to deliver their opinions 'in the freest manner, on the conduct and character of their rulers' (Bentham 2012: 16–17).

In a passage reminiscent of *Fragment on Government*, Bentham explained that the distinction between a despotic and an undespotic government lay in the fact that in the latter ‘some *eventual faculty of effectual resistance*, and consequent change in government, is purposely left, or rather given, to the people. Not inconsistent with government, on the contrary, indispensable to good government, is the existence of this faculty.’ The ‘essential character’ of a non-despotic government was ‘even to *cherish* the disposition to eventual resistance’, and the instruments that were necessary to such a disposition were ‘*instruction, excitation, correspondence*’ (Bentham 2012: 29–30). The instruction informed the understanding, while excitation applied to the will: in order for action to take place, both understanding and will were necessary. Correspondence or communication between individuals was necessary for the co-operation needed to bring about the desired effect. All three instruments – instruction, excitation, and faculty of correspondence – were necessary to keep ‘the national mind ... in ... a state of preparation for eventual resistance’ (Bentham 2012: 30). This state of preparation had two purposes: the first was to bring about a change of government, if it became necessary; and the second was to apply a constant check to misrule.

Necessary to instruction – to excitation – in a word to a state of preparation directed to this purpose, is – (who does not see it?) the perfectly unrestrained communication of ideas on every subject within the field of government: the communication, by vehicles of all sorts – by signs of all sorts: signs to the ear – signs to the eye – by spoken language – by written, including printed, language – by the liberty of the *tongue*, by the liberty of the writing *desk*, by the liberty of the *post office* – by the liberty of the *press* (Bentham 2012: 30–31).

There was nothing new, Bentham pointed out, either in theory or in practice in this: the American Declaration of Independence of 1776, for instance, had acknowledged the right of the people to abolish a government, while in 1688 the English had themselves removed James II from the throne (Bentham 2012: 31–32).

Bentham enshrined these principles in the detailed bureaucratic arrangements which he presented in *Constitutional Code: Volume I* (printed 1827, published 1830), his blueprint for representative democracy. His 'Publication System' was a key component in his strategy for ensuring that government officials (whom he termed public functionaries) behaved well. He endeavoured to provide an institutional framework in which the Public Opinion Tribunal could operate effectively and he recognized that this was only possible if the facts concerning the conduct of government officials were made known, whereupon arguments could be presented concerning the tendency of that conduct to promote or diminish the general happiness (Schofield 2006: 100–103). 'By the *publication system*,' Bentham noted, 'understand that by which the several matters of fact, acquaintance wherewith is in any wise material to the business of [the various departments of government], are rendered, or endeavoured to be rendered, at all times, present, to the mind of every person in whose instance such presence is likely to be in any way of use' (Bentham 1983A: 162). The general rule was that 'publicity will at all times be maximized', but subject to the expense of the publicity (expense being an evil) not outweighing the good that could be expected to arise from it. However, commented Bentham, the cheaper the means of publicity, the greater the extent that might be given to it (Bentham 1983A: 162–163). The good produced by publicity was first general, and second particular:

The *general* consists in the efficiency it gives to the force of the law, and to that of the Public Opinion Tribunal: to wit, in the character of an instrument of security for appropriate aptitude on the part of all public functionaries: the *particular* consists in the particular use derivable from the information afforded concerning each particular matter of fact, to the several individuals, whose happiness may be promoted, or their conduct beneficially influenced by it. (Bentham 1983A: 163)

There were certain situations in which, in addition to the evil of the expense, the evil of publicity would outweigh the good. The first of

these was in relation to elections to the representative assembly. If voting were public, constituents would be subject to the influence of the rich and powerful and, instead of voting according to their own conception of the general interest, vote according to the wishes of their economic and political superiors: 'hence, supposing votes public, a constitution, democratical in *appearance*, may be aristocratical in *effect*: and the happiness provided for—not that of the *many*, but, at the expense of the many, that of the *few*' (Bentham 1983A: 163–164). Other areas in which secrecy should prevail over publicity were in matters of security, both in relation to the armed forces and the internal police, in foreign relations, in health (where an evil might result to a person suffering from some condition with which 'disrepute' was associated), and in certain legal cases (Bentham 1983A: 164). Where secrecy was permitted, the assumption was that the information might 'become subservient to hostile purposes'. In time the danger from publicity would cease, whereupon the suppressed information would become available, and the evil produced by the secrecy would 'be minimized, and the quantity much reduced'. On the other hand, 'at no time can the good produced by publicity cease to exist or operate. For, at no time can the operation of the tutelary power of the Public Opinion Tribunal – the judicial power to which the publicity furnishes its necessary evidence – cease to be needed' (Bentham 1983A: 164–165).

Again, in *Constitutional Code*, Bentham commented: 'On architecture good Government has more dependence than men have hitherto seemed to be aware of.' (Bentham 1983A: 55). In his proposed design for a minister's audience chamber, Bentham showed how publicity and secrecy could be secured by appropriate architectural arrangements (Bentham 1983A: 438). Applying a principle that he had developed in his panopticon prison scheme, namely that being subject to inspection promoted good behaviour, the minister would conduct his business in the middle of a polygonal room, surrounded by boxes inhabited by suitors waiting their turn to do business with him. Hence, the minister's activities would normally take place in public view. There would, however, be an area to which he could retreat, behind a partition, in order to see suitors who wished to converse with him in private – they

might, for instance, have information about some wrong-doing, but if they spoke in public, the miscreant might be given warning and take the opportunity to flee (Bentham 1983A: 445–451). In the panopticon prison, the unseen governor in the centre of the building would have kept a watchful eye on the convicts in the cells around the periphery of the building; in the anti-panopticon of the audience chamber, the public around the periphery would have kept a watchful eye on the minister and his officials.

John Start Mill represented an overlapping but distinguishable approach to the value of the freedom of expression to that adopted by Bentham. Bentham regarded it as a ‘security against misrule’, while Mill regarded it as a means of discovering and maintaining truth and thereby promoting the development of individual character and thus as an essential component of that individual’s happiness (Niesen 2015). The contrast should not be overdrawn since both Bentham and Mill were strongly committed to both truth and utility, although just what each understood by both those notions, it seems, was not exactly the same. In relation to utility, Mill distinguished between higher and lower pleasures (Mill, J.S. 1969b: 209–214), whereas Bentham did not. For Bentham, truth consisted ultimately in facts about the physical world, whereas Mill perhaps had a more expansive view, since he recognized aesthetic and sympathetic domains which, he argued, were missing from Bentham (Mill, J.S. 1969: 112–113). Nevertheless, when the youthful Mill wrote on the freedom of expression in 1825, his theme was that freedom of expression was the main safeguard against despotism – at that time, his position, in this respect at least, was little different to that of Bentham and his father James Mill, whose own essay on ‘Liberty of the Press’ had appeared in the *Encyclopædia Britannica* in 1821 (Mill, J.S. 1984; Mill, J. 1972). The different emphases in the early nineteenth-century writings of Bentham and the mid-nineteenth-century writings of Mill may reflect more the circumstances in which they were respectively writing rather than any fundamental disagreement. Bentham was writing before the Great Reform Act of 1832 when the ruling aristocracy were actively resisting demands for political reform, while Mill’s famous defence of the freedom of expression which appeared in *On Liberty* in 1859 was written at a time when a popular

form of government was becoming firmly established and his concern was more with the dangers of the stifling conformity that he feared would result from the pressure to conform with mass opinion.

In *On Liberty*, Mill's argument was centred on the promotion of truth. He claimed that to suppress an opinion was evil for two reasons. The first reason was that the suppressed opinion might be true, and to state that it was absolutely false was to assume an infallibility that no one possessed. Furthermore, the best means for establishing that an opinion was true was not by suppressing an opposing opinion, but by allowing it to be subjected to contradiction and possible refutation. Error was corrected by experience and discussion. If it were retorted that certain opinions were so useful to society that government was justified in preventing any discussion of them, this was still to claim infallibility, since the question of their usefulness was likewise a matter of opinion (Mill, J.S. 1977a: 228-234). The second reason was that even if the received opinion were true, unless it were subject to challenge and discussion, it would be 'held as a dead dogma, not a living truth'. Truth held as a prejudice was no better than superstition. Mill stated: 'on every subject on which difference of opinion is possible, the truth depends on a balance to be struck between two sets of conflicting reasons'. One had to understand both sides of an argument, and not just the arguments that supported one's own view (Mill, J.S. 1977a: 243-245). In most cases, however, argued Mill, no one had a monopoly of truth, and the more common case was where 'conflicting doctrines, instead of being one true and the other false, share the truth between them' (Mill, J.S. 1977a: 252-253, 257-258). There is disagreement amongst scholars as to whether Mill was committed to a more or less absolute defence of freedom of expression, which in turn is related to the underlying justification attributed to Mill for the value that he gave to truth.<sup>7</sup> These debates are beyond the scope of the present paper, but suffice it to say that, for better or worse, Bentham did not rely directly on any argument about the discovery or maintenance of truth in his defence of freedom of expression.

Since Bentham's main concern was with freedom of the press as a bulwark against despotism and a force for democratic reform, his arguments might have been more relevant to the nineteenth-century

Scandinavian context than those of Mill, whose emphasis was on the pursuit of truth as a means of personal self-development. Bentham's main arguments in relation to freedom of expression were subservient to his desire to promote good government, which, in his view, meant representative democracy. Such a government was the only form of government which could be so organized as to promote the greatest happiness of the community as a whole, rather than the greatest happiness of rulers. It was not that democracy in itself produced good government, but that securities for good government could only be made effective under a democracy, and one of the most important securities was publicity. Having suggested that Bentham's approach might be contrasted with that of Mill in relation to the purposes to which freedom of expression was subservient, the contrast should not be over-stated. In the first place, both Bentham and Mill regarded freedom of expression as valuable not for its own sake, but because, they respectively argued, it promoted good government and the discovery of truth – yet good government and the discovery of truth themselves (and the subsequent development of character) were in turn not valuable for their own sake, but because they promoted the greatest happiness. Moreover, in his discussion of the freedom of expression in the context of its subservience to good government, Bentham did not lose sight of the importance of truth: he noted, for instance, that the truth of an accusation should constitute a legal defence against libel and that false accusations were not to be condoned, but had to be tolerated as a price for the greater good of free discussion. It might be more appropriate to take Bentham's and Mill's accounts as complementary, and point to the depth and richness of the justifications put forward by the nineteenth-century utilitarians for promoting the freedom of expression. While English utilitarian ideas seem to have had little traction in Scandinavian intellectual circles before the 1880s (unless it emerges that Bentham's recommendations for the organization of political assemblies had some influence in the 1820s), once Mill's *On Liberty* became known, it does appear, in Sweden at least, to have had some real impact.

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## Endnotes

<sup>1</sup> The liberal Constitution of Cadiz of 1812 had been revoked by Ferdinand VII upon his reinstatement as King of Spain in 1814. Such was the discontent with Ferdinand VII's personal rule that, following a revolt in the army, the Constitution was re-established in 1820, only to be revoked again in 1823.

<sup>2</sup> A sanction was a source of pleasure or pain, which was in turn a motive to action: the main sanctions identified by Bentham were the political including the legal, imposed by the state; the religious, imposed, or rather believed to be imposed, by a supernatural being; the moral, imposed by public opinion; and the sympathetic, imposed by one's self (Bentham 1983b: 197–201).

<sup>3</sup> For an account of nineteenth-century English law in relation to the freedom of the press see the essay by Eric Barendt elsewhere in this issue.

<sup>4</sup> The notion of appropriate aptitude was a central feature of Bentham's political theory (Schofield 2006: 272–303).

<sup>5</sup> As Bentham pointed out (Bentham 2015: 125–128), the greater the power possessed by a man, the less likely he would be to exert himself either physically or mentally, since he could simply order others to get him whatever he wanted, and thereby avoid the pain of labour. Hence an oriental despot would tend to be reduced to 'a state next to infantine imbecillity and ignorance'. He applied the same arguments in detail to monarchs in general, and to the King of Great Britain in particular, in 'Supreme Operative', written in 1821–1822 (Bentham 1989: 150–226).

<sup>6</sup> In contrast to Bentham, John Stuart Mill argued in favour of public voting, on the grounds that it would subject voters to the sanction of public opinion

and thus motivate them to vote in support of the public interest rather than their selfish interest (Mill 1977b: 488–95). Bentham's point was that the public interest was made up of the aggregate of selfish interests, and by ensuring that individuals voted in their selfish interests, the overall outcome would be the promotion of the public interest (Schofield 2006: 292).

<sup>7</sup> For a sample of views see Crisp 1997: 189–195; O'Rourke 2001; Riley 2005; and Jacobson 2017.