

FREEDOM OF EXPRESSION, PRESS, AND CENSORSHIP IN 19TH CENTURY EUROPE AND THE USA

Raed Ghanem*

Abstract

Across nations, the nineteenth century saw a dynamic interplay between press freedom, political power, and civil liberties. During this revolutionary era, this research investigates societal transformations, tensions between tradition and innovation, and the evolving battle for expression.

Across continents, press freedom has emerged as a key driver in creating sociopolitical processes. The UK's experience paralleled Europe's heterogeneous geography, as radical groups met with repressive policies such as Germany's Carlsbad Decrees, highlighting the delicate balance between intellectual freedom and governmental control.

A turbulent path emerged in the United States. The expansion of suffrage, black citizens' exclusion, and women's suffrage exemplified the battle between democracy and wartime trials. Abraham Lincoln's actions, as well as the gradual influence of the 14th Amendment, shed light on the difficult balance between governmental authority and the protection of individual liberty. Based on an analytical, historical, and comparative perspective, this study seeks to provide light on the battle of the press and intellectuals against authoritarian constraints as one of the reasons sustaining the right to free expression, concluding that in both Europe and America, the 19th century saw significant improvements to the freedom of expression. Despite obstacles, the press developed into a potent force for change, upending conventions and influencing views. Press freedom conflicts mirrored larger social conflicts like abolitionism and women's suffrage. This legacy emphasizes how important a free press is to democracy and societal advancement.

Keywords: Freedom of Expression, Press Freedom, Europe, USA, 19th Century

Introduction

The nineteenth century in Europe showed unevenness in terms of the level of protection as well as limits on the press's and people's right to freedom of expression, especially as the intellectual influences produced by the Enlightenment began to fade. While the idea of a free press gained momentum and led to brief periods of liberal euphoria, it was often met with fierce opposition from conservative governments and forces who saw it as a threat to social order and stability.

The press played a significant role in the battle between the ruling classes and the rest of society during the 19th century in Europe. It was a vital means for organizing popular political opposition, and one of the few ways that the middle and lower classes could affect governments and gain recognition. Consequently, major battles for freedom of the press took place in many European countries throughout the 19th century. Representatives of the traditional ruling elements detested the idea of a free press and frequently viewed journalists as members of a

* PhD Candidate, Deák Ferenc Doctoral School of Law, Institute of European and International Law, Faculty of Law, University of Miskolc. I would like to thank my supervisor Marinkás, György PhD, associate professor, Institute of European and International Law, Faculty of Law, University of Miskolc.

degraded profession.¹ Conservatives saw the press as a plague or a poison that threatened the health of European society and blamed virtually all the world's ills on it. They viewed the press as fundamentally irresponsible and filled with lies and incitement to unrest. Despite this, the press continued to grow and develop during this period.²

In the USA, freedom of expression and the press experienced growth with a rise in newspapers, contributing to democratic processes. While the First Amendment protected these rights, challenges like censorship laws, partisan journalism, and debates on press freedom during wartime emerged. The press played a crucial role in advocating for abolitionism, women's suffrage, and social change.

This study intends to dive into the press's essential role in the conflict between the governing classes and the public, investigating the threats to press freedom and its impact on sociopolitical dynamics. This paper strives also to explore how the struggle for a free press connected with broader societal transformations, illustrating the tensions between innovation and tradition throughout this revolutionary era by analyzing battles for press freedom across European countries and the United States.

1. Press repression and European stability: Congress of Vienna's influence

In the 19th century, there were some repressive methods employed to manage the press in Europe. These techniques were broadly classified into two types: the first type is direct repression, which aims to stop inappropriate content from being printed (prior censorship) or penalize those accountable for publishing such content (punitive or post-publication censorship). The second type is indirect repression, which did not outlaw or punish specific journalists or published material but instead discouraged the lower classes from publishing or purchasing newspapers by placing financial constraints on the press.³

The *Congress of Vienna*, which took place from 1814 to 1815, aimed to establish a new balance of power in Europe after the defeat of *Napoleon Bonaparte*. The Congress was attended by representatives from most of the major powers in Europe, and the resulting treaties and agreements established a new political order on the continent.⁴ The Congress of Vienna was characterized by a conservative and authoritarian political climate, in which the main goals were to restore traditional institutions and suppress revolutionary movements. The Congress sought to create a stable and predictable political order that would prevent future conflicts and maintain the existing power structures.⁵

One of the ways in which Congress entrenched this political order was through the establishment of a system of international alliances and agreements. The Congress created a system of balance of power that aimed to prevent any one country from becoming too dominant in Europe. This system was maintained through a series of alliances and treaties that committed countries to come to each other's aid in the event of war or aggression. Another way in which the Congress entrenched the traditionalist political order was through the restoration of monarchies and the suppression of revolutionary movements. The Congress sought to restore

¹ GOLDSTEIN, ROBERT Justin: *Political Censorship of the Arts and the Press in Nineteenth-Century*. Springer, 1989. 26.

² GOLDSTEIN, op. cit. (1989), 26-28.

³ GOLDSTEIN, op. cit. (2013) 65-66.

⁴ Britannica, The Editors of Encyclopedia. "Congress of Vienna". Encyclopedia Britannica, 11 Dec. 2022, <https://www.britannica.com/event/Congress-of-Vienna>. Accessed 3 April 2023.

⁵ LESAFFER, RANDALL: *The congress of Vienna (1814–1815)*. Oxford Historical Treaties online (2015). <https://opil.ouplaw.com/page/477>. (date of download: 18.10.2023).

the old order and reinstate the ruling families that had been deposed during the Napoleonic Wars. The Congress also worked to suppress revolutionary movements that threatened to destabilize the new political order.⁶

2. German Confederation

In 1819, German authorities introduced a series of measures aimed at suppressing liberal and nationalist ideas that had emerged after the defeat of Napoleon. These measures were known as *Carlsbad Decrees*.⁷ The decrees were introduced in response to the assassination of the conservative writer *August von Kotzebue*, who was killed by a radical student in 1819. The decrees had far-reaching effects, centralizing preventive censorship, and limiting academic freedom across the *German Confederation*.⁸

One of the key provisions of the Carlsbad Decrees was the establishment of a Central Commission in *Mainz*, which was tasked with enforcing preventive censorship across the German Confederation. The commission was responsible for monitoring the press, universities, and public gatherings, and had the power to suppress any ideas or opinions that were deemed dangerous to the political stability of the Confederation.⁹ This centralization of censorship effectively suppressed any dissenting voices and prevented the spread of liberal and nationalist ideas. Another significant provision of the Carlsbad Decrees was the limitation of academic freedom. The decrees required universities to appoint government-approved professors and banned student organizations that were deemed subversive or dangerous. The decrees also mandated the expulsion of any students who were found to be participating in subversive activities or who were suspected of holding liberal or nationalist beliefs. These measures effectively curtailed the ability of universities to promote liberal or nationalist ideas and ensured that students were discouraged from engaging in political activism.¹⁰

The Carlsbad Decrees also established a system of surveillance and repression that lasted for many years in German Confederation. The decrees allowed for the arrest and imprisonment of individuals suspected of participating in subversive activities, and gave the authorities broad powers to investigate and prosecute suspected subversives.¹¹ This system of surveillance and repression was highly effective in suppressing any dissenting voices and ensuring that the political stability of the German Confederation was maintained.

In 1832, two sets of laws that aimed to limit free expression and enforce censorship were passed. These laws were known as the Six Articles and the Ten Articles. The Six Articles stated that "the limits of free expression cannot... be exceeded in a manner that endangers the peace of an individual Confederal state or that of Germany as a whole." In other words, the government believed that free expression could be limited if it posed a threat to the peace and stability of Germany. While The Ten Articles, which were passed a few days later, went even further by forcing individual states within the German Confederation to enforce censorship.

⁶ MCHANGAMA, J.: *Free speech: a history from Socrates to social media*. Hachette UK, Basic Books, London, 2022, 182-183.

⁷ See: German Bundestag. The German unification and freedom movement (1800 - 1848). https://www.bundestag.de/en/parliament/history/parliamentarism/1800_1848. (date of download: 02.04.2023)

⁸ EYCK, F. Gunther. The political theories and activities of the German academic youth between 1815 and 1819. *The Journal of Modern History* 27, no. 1 (1955) 27-38.

⁹ JACHMANN, Maika: The German Unification and Freedom Movement (1800-1848). German Bundestag. https://www.bundestag.de/en/parliament/history/parliamentarism/1800_1848. (date of download:02.04.2023)

¹⁰ *Carlsbad Decrees*. Encyclopedia of Modern Europe: Europe 1789-1914: Encyclopedia of the Age of Industry and Empire. Encyclopedia.com. 20 Mar. 2023 <<https://www.encyclopedia.com>>. (date of download:03.04.2023)

¹¹ MCHANGAMA, op.cit. 182.

The articles required states to establish a censorship bureau, which would be responsible for reviewing all books, newspapers, and other publications before they were published. This censorship bureau would have the power to ban any materials that were deemed to be subversive or dangerous to the public order.¹²

Together, the Six Articles and the Ten Articles represented a significant curtailment of free expression in Germany. And they reflected the government's growing concern about political unrest and social upheaval, and its belief that censorship was necessary to maintain stability and order.

German writers like *Heinrich Heine* and *Karl Marx* faced significant challenges in their efforts to express their ideas and fight against censorship and repression in their time. Both writers were known for their critical views on the political and social institutions of their time, and their work often clashed with the conservative political climate of the German states in the 19th century.

Heinrich Heine, for example, was a poet and journalist who was known for his critical views on the government, religion, and society. Heine faced significant censorship and repression during his lifetime, and many of his works were banned or censored by the authorities.¹³ Despite these challenges, Heine continued to write and publish his work, often using irony and satire to criticize the government and society. "*Where they burn books, they will also burn people in the end.*"¹⁴ What happened next during the Nazi era validated Heine's fears.

Karl Marx, on the other hand, was a philosopher and political theorist who is best known for his critiques of capitalism and his advocacy for socialism. Marx's work was highly controversial in his time, and he faced significant censorship and repression from the authorities. Marx's works were banned in many German states, and he was forced to flee to London to escape persecution. Despite these challenges, Marx continued to write and publish his ideas, and his work had a significant impact on the development of socialist and communist movements in Europe and around the world.¹⁵

Although Karl Marx's early writings on press freedom and communication have been relatively neglected compared to his later Marxist theories, they provide compelling evidence of his concern for public communication and the press's role in a democratic society. Marx placed great emphasis on freedom as a prerequisite for democratic practice and the importance of a free press. Specifically, his arguments on press freedom primarily aimed to challenge external restrictions, including state censorship. Marx recognized the significance of political expression and publicity and developed a model of intellectual authority that effectively engaged his readers. His political objective was the democratic emancipation of the working class, with a particular emphasis on the proletarian character.¹⁶

The March Revolution of 1848 ended state censorship in Germany temporarily. The Fundamental Rights of the German People included a guarantee of press freedom but did not gain validity. After the revolution, German states reintroduced press laws with restrictive

¹² See: The Six Articles (June 28, 1832) and the Ten Articles (July 5, 1832), German History in Documents and Images (GHDI). From Vormärz to Prussian Dominance (1815-1866)

https://ghdi.ghidc.org/docpage.cfm?docpage_id=150. Date of download (05.04.2023)

¹³ SAMMONS, Jeffrey L.: Heinrich Heine. in: *Encyclopedia Britannica*, 13 Feb. 2023,

<https://www.britannica.com/biography/Heinrich-Heine-German-author>. (date of download:27.08.2023).

¹⁴ ZIOLKOWSKI, Theodore: Heinrich Heine. *The Hudson Review*, Vol. 36, No. 1, 35th Anniversary Issue (Spring, 1983), 217-223.

¹⁵ See more: FEUER, Lewis S. and MCLELLAN, David T.: Karl Marx. in: *Encyclopedia Britannica*, 10 Mar. 2023, <https://www.britannica.com/biography/Karl-Marx>. (date of download:04.04.2023)

¹⁶ Hanno HARDT: Communication is Freedom: Karl Marx on Press Freedom and Censorship, *Javnost - The Public* (2000), 7:4, 85-99, DOI: 10.1080/13183222.2000.11008760.

provisions, but the liberal public sphere still developed. The Imperial Press Law in 1874 replaced state press laws and abolished restrictions on press freedom in the German Empire. However, special restrictions remained during times of war, threat of war, or internal upheavals. Chancellor Otto von Bismarck used these restrictions to limit the Catholic and Social Democratic press during the Kulturkampf and after the issuance of the Anti-Socialist Laws in the 1870s.¹⁷ The law was seen by many as a reactionary measure that aimed to suppress political dissent and maintain the power of the ruling class. It was opposed by journalists, writers, and intellectuals, who argued that it violated basic principles of freedom of expression and the press. Despite the opposition, the law was passed and remained in effect until the end of World War I.¹⁸

3. United Kingdom

In the United Kingdom, during the nineteenth century, the Tories aimed to suppress the movement for parliamentary reform by using the crime of seditious libel to clamp down on radical speech and action. The restrictions on freedom of expression mainly consisted of common law offenses, and the most significant one was seditious libel. It was defined as publishing material with a seditious intention, but advocating reform through peaceful means did not amount to sedition. Another offense was blasphemy, which involved publishing a denial of God's existence or the divinity of Christ or opposing the established Church of England. Defamation was also a criminal offense, and during the nineteenth century, civil actions for damages became more common than criminal prosecutions. Juries played a significant role in determining what was permissible, and the vagueness of the offenses benefited publishers who were tried before sympathetic, liberal juries.¹⁹

One of the most famous cases of censorship in the 19th century was the trial of the publisher William Hone in 1817. Hone had published a series of satirical pamphlets criticizing the government, and he was charged with blasphemy and seditious libel. He was acquitted by a jury, but the case demonstrated the government's willingness to crack down on dissent.²⁰

The Peterloo Massacre in 1819, where troops killed and injured protesters, became a powerful symbol of oppression for democratic reformers. The government responded with the "Six Acts" of 1819, which increased punishments for seditious libel, limited freedom of association, and made newspapers unaffordable for the poor.²¹

¹⁷ The 1874 press law in Germany, also known as the "Lex Heinze," was a controversial law that sought to limit freedom of the press. It was named after its chief architect, Adolf Heinze, who was the Minister of the Interior at the time. The law required journalists to obtain official government licenses, increased penalties for defamation and libel, and gave authorities the power to censor content that was deemed offensive or harmful to public order. see: WILKE, Jürgen: *Censorship and Freedom of the Press*, in: *European History Online (EGO)*, published by the Leibniz Institute of European History (IEG), Mainz 2013-05-08. URL: <http://www.ieg-ego.eu/wilkej-2013a-en> URN: urn:nbn:de:0159-2013050204 (date of download:05.04.2023). GOLDSTEIN, GOLDSTEIN, R.J. (1983). *Political Repression in 19th Century Europe* (1st ed.). Routledge. <https://doi.org/10.4324/978020370606>.

¹⁸ Howard TUMBER, Marina PRENTOULIS: Freedom of the Press in Western Europe. in: *Encyclopedia of International Media and Communications*, Elsevier, 2003, 193-202.

¹⁹ BARENDT, E. Freedom of Expression in Nineteenth Century England: Weak in Principle, Robust in Practice. *Scandinavica*, 58(2) (2019), 29-38.

²⁰ PETERSON, Ted: The Fight of William Hone for British Press Freedom. *Journalism Quarterly* 25, no. 2 (1948), 132-138.

²¹ MCHANGAMA: op.cit., 174-177. See also: *Six Acts*. The Oxford Companion to British History. Encyclopedia.com. 20 Mar. 2023 <<https://www.encyclopedia.com>>.

The Reform Act of 1832 was a significant piece of legislation that reformed the electoral system in England and Wales. While it did not have a direct impact on freedom of expression, it did have indirect effects on the ability of individuals to express their opinions. Before the Reform Act, the majority of the population in England and Wales was excluded from voting, and many constituencies had very few voters.²² This meant that those in power were often unaccountable to the wider population, and there was little opportunity for the public to express their opinions or influence government policy.

The Reform Act significantly increased the number of eligible voters and redistributed parliamentary seats more fairly. This meant that more people had a say in how the country was run, and there was greater accountability for those in power. This increase in political participation had an indirect impact on freedom of expression. As more people had a voice in government, there were more opportunities for public debate and discussion on political and social issues.²³ However, some scholars agree that the reform did not fulfil its promises and that many of the problems of the pre-reform system persisted into the Victorian era. While some scholars view the pre-reform system positively, others, like Gash, stress the negative consequences of the reform. Moore's quantitative analysis supported Gash's position and influenced later interpretations. The recent scientific consensus, such as Vernon's and Cox's, also diminish the significance of the 1832 reform, arguing that local and individual leaders, symbols, and loyalties had more influence on politics than the electoral system.²⁴

The Second Reform Act of 1867 was also a significant piece of legislation passed by the British Parliament that extended the right to vote in parliamentary elections to a larger portion of the male population in the United Kingdom. Before the Second Reform Act, only men who owned a certain amount of property or paid a certain amount of rent were eligible to vote.²⁵ This meant that the vast majority of men in the UK were excluded from the democratic process. The Act created a new system of voter registration and redrew the electoral map of the country, increasing the number of parliamentary seats and redistributing them to better reflect the population. It also abolished some of the remaining "rotten boroughs" and gave more representation to fast-growing industrial towns and cities.²⁶

The Second Reform Act was a major step towards a more democratic system of government in the UK, and it paved the way for further reforms in the years to come, including the Third Reform Act in 1884,²⁷ which extended the franchise to most men, and the Representation of the People Act 1918, which gave all men and some women the right to vote.²⁸

²² PHILLIPS, John A., and Charles WETHERELL: The Great Reform Act of 1832 and the political modernization of England. *The American historical review* 100, no. 2 (1995): 411-436.

²³ MCHANGAMA: op.cit. 179. See also: *Reform Bill*. in Encyclopedia Britannica. 28 May. 2022, <https://www.britannica.com/event/Reform-Bill>. (date of download: 06.04.2023)

²⁴ Phillips, J. A., & Wetherell, C. (1995). The Great Reform Act of 1832 and the Political Modernization of England. *The American Historical Review*, 100(2), 411–436. <https://doi.org/10.2307/2169005>.

²⁵ *Second Reform Act*. St. James Encyclopedia of Labor History Worldwide: Major Events in Labor History and Their Impact. Encyclopedia.com. 20 Mar. 2023 <<https://www.encyclopedia.com>>.

²⁶ HIMMELFARB, Gertrude: The politics of democracy: the English Reform Act of 1867. *Journal of British Studies* 6, no. 1 (1966), 97-138. <https://doi.org/10.1086/385529>

²⁷ GLEN, William Cunningham: *The Representation of the People Act, 1884, with Introduction, Notes, and Index*. Shaw & Sons, 1885.

²⁸ BLACKBURN, Robert: Laying the foundations of the modern voting system: The Representation of the People Act 1918. *Parliamentary History* 30, no. 1 (2011): 33-52.

4. France

In France, the laws regarding the press changed frequently during the 19th century due to political upheavals. The ‘*Charte constitutionnelle*’ issued in 1814 guaranteed the right to express opinions publicly, but pre-publication censorship was reintroduced in 1814, and repressive censorship was extended in 1835.²⁹ After the February Revolution of 1848, pre-publication censorship was abolished but reintroduced again two years later. Under the French Third Republic, the Opportunist Republicans who were in power at the time sought to liberalize the press and encourage open public discussion. In 1881, they passed the Press Law which abolished a number of previous regulations and established the principle that "Printing and publication are free".³⁰ The press developed slowly and in a disrupted fashion due to the changeable political climate, with new publications frequently established to promote freedom of the press.

The struggle against censorship and limitations on political expression in 19th-century France was exceptionally fierce and persistent, largely due to the combination of a highly politicized population and authoritarian regimes. Other major European countries, including Russia, Germany, and the Hapsburg Empire, had a generally lower level of political engagement, and thus, challenges to restrictions on free expression were less prominent.³¹ French authorities were especially fearful of visual forms of dissent, such as caricature and theater, given their perceived greater impact on illiterate "dark masses." Even after ending prior censorship of printed materials, France continued to heavily restrict freedom of expression, with the Liberal Press Act of 1881 finally abolishing most of these limitations and replacing 42 laws and 325 provisions enacted over 75 years by 10 different systems.³²

5. USA

In 19th century USA, a democratic system emerged that favored local control and excluded women from voting while granting voting rights to immigrants and former slaves after the Civil War. Despite this expansion of suffrage for some, the definition of those entitled to enjoy the "blessings of liberty" came to be defined by race, with black people excluded from citizenship and confined to second-class status. However, the struggle by abolitionists, slaves, and free blacks themselves reinvigorated the notion of freedom as a universal birthright. The movement for women's suffrage also arose out of the abolitionist movement, and women's suffragists concluded that women must form their organizations to press for equal rights.³³

In 1836, The U.S. House of Representatives adopted gag rules preventing the discussion of antislavery proposals. The gag rules were a series of rules adopted by the United States House of Representatives in the early 19th century, which prohibited the consideration of petitions calling for the abolition of slavery. These rules effectively prevented debate on the issue of slavery and were supported by Southern congressmen who feared that discussion of slavery

²⁹ *Constitutional Charter of 1814*, THE NAPOLEON SERIES. https://www.napoleon-series.org/research/government/legislation/c_charter.html. (date of download: 06.04.2023).

³⁰ GOLDSTEIN, Robert Justin. "Fighting French Censorship, 1815-1881." *French Review* (1998): 785-796.

³¹ Ibid.

³² Ibid.

³³ *Free Speech in the Nineteenth Century. The Bill of Rights* 1. Encyclopedia.com. 20 Mar. 2023 <<https://www.encyclopedia.com>>.

would lead to its abolition. The gag rules were eventually repealed after years of political and social pressure from abolitionists and their supporters.³⁴

During the Civil War, the government realized early on that newspapers could provide valuable information to the South and fuel their resistance. Consequently, measures were taken to limit their influence, including controlling reporters, censoring the telegraph system, banning them from the mails, closing newspaper offices, and using military force to arrest editors.³⁵

In 1863, General Ambrose Burnside, who was commanding the Department of the Ohio, ordered the suppression of the Chicago Times for what he deemed disloyal and incendiary reporting. Burnside accused the newspaper of publishing "disloyal statements," "inciting resistance to the law," and "encouraging desertions." Burnside's order stated that the paper was to be suppressed "until further orders," and he also ordered the arrest of its editor and publisher, Wilbur F. Storey.³⁶

The incident sparked a heated debate over the limits of free speech during wartime and the extent to which the government could restrict or suppress dissent. Many saw Burnside's actions as a dangerous precedent that could be used to suppress legitimate criticism and dissent, while others argued that the exigencies of war required strong measures to preserve national unity and protect against subversion.³⁷

However, President Abraham Lincoln quickly rescinded Burnside's order, stating that he had no authority to suspend the publication of newspapers or to arrest civilians for disloyal sentiments, except where specifically authorized by law. Lincoln also feared that Burnside's actions would be seen as an abuse of power and a violation of civil liberties, which could alienate many in the North who were already critical of his war policies.³⁸

In 1864, President Abraham Lincoln ordered General John A. Dix to suppress the New York Journal of Commerce and the New York World newspapers due to their publishing of false reports about a potential draft of soldiers. The newspapers were closed for two days before a federal judge ordered them reopened, stating that the government did not have the power to shut down a newspaper without a trial. The publishers and editors were released a few days later.³⁹

³⁴ JENKINS, Jeffery A., STEWART, Charles III: Causal inference and American political development: The case of the Gag rule. *Public choice* 185, no. 3-4 (2020), 429-457.

³⁵ CARROLL, Thomas F.: Freedom of Speech and of the Press during the Civil War. *Virginia Law Review* (1923): 516-551.

³⁶ See more: PAUL, Norma Ann: Suppression of the Chicago Times: June 1863 (1932). *Master's Theses*. 315. https://ecommons.luc.edu/luc_theses/315. (date of download: 18.10.2023).

³⁷ Michael Kent CURTIS: Lincoln, Vallandigham, and Anti-War Speech in the Civil War, *William & Mary Bill of Rights Journal* 7, no. 1 (December 1998): 105-192

³⁸ After the Vallandigham and Chicago Times affairs in July 1863, President Lincoln expressed his regret about the arrest of the Democrat editor and wrote to General John Schofield about the issue. Later in October of the same year, when General Schofield required all inhabitants of a county to leave their homes in an effort to eliminate rebels, Lincoln again wrote to him addressing the issue of suppression of speech and press. He urged General Schofield to exercise restraint and only arrest individuals and suppress assemblies or newspapers if they were causing harm to the military. Furthermore, Lincoln gave General Schofield the discretion to exercise caution, calmness, and forbearance in allowing the expression of opinion in any form, and to not allow it to be violently interfered with by others. See: CURTIS, op.cit. 105.

³⁹ The newspapers had published a fabricated presidential proclamation which called for 400,000 more men to be drafted into the Union Army. The false report caused panic in New York City and led to riots city. General Dix ordered the suppression of the newspapers and the arrest of the publishers and editors, claiming that they were interfering with the war effort and that their actions were aiding the Confederacy. See: MOTT, Frank Luther: American journalism. *Science and Society* 6, no. 3 (1942). Asp David. *Civil War, U.S. The First Amendment Encyclopedia*. <https://www.mtsu.edu/first-amendment/article/1059/civil-war-u-s>. (date of download: 08.04.2023).

This event also triggered a discussion on the limits of the government's authority to censor or silence the media and the extent of press freedom in times of war. Some contended that the government was obligated to safeguard the war campaign and that the newspapers were engaging in hazardous and reckless conduct. In contrast, others viewed the occurrence as a breach of the First Amendment's safeguards for press freedom.⁴⁰

The 14th Amendment to the United States Constitution was adopted on July 9, 1868, as one of the Reconstruction Amendments following the Civil War. Its adoption was a significant victory for African American civil rights. The amendment granted citizenship to all persons born or naturalized in the United States, including former slaves, and guaranteed all citizens equal protection of the laws. The amendment's first section, known as the Equal Protection Clause, prohibits states from denying any person within its jurisdiction the equal protection of the laws. It also includes the Due Process Clause, which prohibits state and local governments from depriving persons of life, liberty, or property without due process of law.⁴¹

The 14th Amendment's due process clause was ambiguous about whether it applied to all the guarantees in the Bill of Rights or only to those related to a fair trial. The Supreme Court avoided ruling on this matter in the first case interpreting the 14th Amendment in 1873. The Supreme Court did not apply the Bill of Rights to the states until 1925 in the *Gitlow* case. Following this decision, the Supreme Court gradually applied most of the guarantees of the Bill of Rights to the states, creating what amounted to a "second bill of rights" that limited the actions of state governments.⁴²

In 1873, The Comstock Law was adopted, also known as the Federal Anti-Obscenity Act. It was a federal law passed by the United States Congress and signed into law by President Ulysses S. Grant. The law was named after its chief advocate, Anthony Comstock, who was a 'moral crusader' against what he considered obscenity, particularly in literature and the arts.⁴³ The Comstock Law made it a federal offense to use the U.S. Postal Service to send any "obscene, lewd, or lascivious" material, including books, pamphlets, and other printed materials that were considered immoral or obscene. It also prohibited the importation, sale, and distribution of obscene materials in the United States, as well as the circulation of any literature or information related to contraception and abortion.⁴⁴ The law was criticized by some as a violation of the First Amendment's protection of free speech and the freedom of the press, and it was challenged in the courts. However, the law was upheld by the Supreme Court in 1877 in the case of *United States v. Reynolds*.⁴⁵

Theoretically, in his book "On Liberty", John Stuart Mill presented one of the strongest defenses of liberty within an integrated theory that combines individual and social values. Mill based his defense on the individual's supremacy over himself, his body, and his mind, and thus

⁴⁰ CARROLL op.cit. 516-551.

⁴¹ The House Joint Resolution Proposing the 14th Amendment to the Constitution, June 16, 1866; Enrolled Acts and Resolutions of Congress, 1789-1999; General Records of the United States Government; Record Group 11; National Archives.

⁴² Holmes Jr. in his dissent in the same case, said: 'The general principle of free speech . . . must be taken to be included in the Fourteenth Amendment, in view of the scope that has been given to the word 'liberty' as there used, although perhaps it may be accepted with a somewhat larger latitude of interpretation than is allowed to Congress by the sweeping language that governs or ought to govern the laws of the United States.' See: FRANKFURTER, Felix: Memorandum on "Incorporation" of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment. *Harvard Law Review* 78, no. 4 (1965), 746-783.

⁴³ Britannica, The Editors of Encyclopaedia. "Comstock Act". Encyclopaedia Britannica, 30 May. 2022, <https://www.britannica.com/event/Comstock-Act>. (date of download: 08.04.2023).

⁴⁴ BLANCHARD, Margaret A. "The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society--From Anthony Comstock to 2 Live Crew." *Wm. & Mary L. Rev.* 33 (1991): 741.

⁴⁵ *Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244, 25 L. Ed. 2d 244 (1879).

his right to determine the form and style of his life according to what he believes.⁴⁶ It is logical (according to this strong conception of individual freedom) that interference in individual freedom by the state or society is not acceptable, therefore Mill adopted a single exception to interference with individual freedom, which he called the harm principle. Liberty (as well as other rights) when it involves harm to others, deprives it of its immunity against interference.⁴⁷ However, the scope within which the state or society can intervene is limited. Only when the expression of individual liberty may cause "harm to others" can restrictions through legal means or social coercion be legitimate.⁴⁸

Mill presented his thoughts on the importance of protection of freedom of expression as necessary to discover the truth and eliminate error, and he argued that freedom of expression must be defended because it creates an environment in which people can discover the truth by allowing all ideas, including unpopular ones, to compete for acceptance.⁴⁹ In Mill's utilitarian framework, the discovery of truth is an important societal goal.⁵⁰

Mill's theory of freedom of expression concentrated on the idea that societal progress is linked to individual development, in which independent-minded individuals advance their search for truth by following their ideas, even if it leads to conclusions that are uncomfortable for others.⁵¹ Hence Mill defends even false opinions because they may contain some truth since it seems difficult if not impossible to suppress a false opinion without suppressing what is true. So, for the sake of truth, both are worth protecting. Accordingly, it is illegal to suppress an opinion simply because it is believed to be wrong, and therefore all opinions, including unpopular ones, are considered to clarify the truth.

Conclusion

The 19th century was a period of significant changes in Europe and America, particularly in relation to the concept of freedom of expression. While there were many challenges to this fundamental right, including censorship, government repression, and societal norms, there were also many advocates who fought tirelessly for the right to free expression.

That period was a watershed milestone in the growth of free expression and the press in both Europe and the United States. In the face of conservative forces and altering sociopolitical landscapes, the press evolved as a potent weapon for advocating change, challenging norms, and shaping public opinion. The battles for press freedom mirrored larger social transformation struggles, such as abolitionism and women's suffrage.

The contrast of liberal aspirations with conservative opposition highlighted the complicated interplay between tradition and progress. Despite the odds, the press displayed tenacity, growth, and flexibility. The changing nature of censorship laws, disagreements about press rights during times of conflict, and the rise of political journalism all contributed to the fluid character of press freedom.

Mill's essays had a significant influence on the development of freedom of expression in America. His ideas regarding the importance of free speech and the pursuit of knowledge

⁴⁶ GRAY, John – Geoff W. SMITH (eds.): *JS Mill's on Liberty in Focus*. Routledge, 2012, p. 37.

⁴⁷ Ibid, 33.

⁴⁸ Ibid, 2.

⁴⁹ Ibid, chapter 2.

⁵⁰ Emerson THOMAS: Toward a General Theory of the First Amendment, *Yale Law Journal* 72 (1963):877.

⁵¹ CATE, Irene M. Ten: Speech, Truth, and Freedom: An Examination of John Stuart Mill's and Justice Oliver Wendell Holmes's Free Speech Defenses. *Yale JL & Human.* 22 (2010): 35.

were embraced by many American thinkers and politicians, who incorporated them into American law and society.

As we reflect on this age, it becomes clear that the struggle for freedom of expression transcends time and space. The lessons of the nineteenth century are still relevant today, as nations around the world struggle to strike a balance between press freedom and responsible journalism in the face of societal and political pressures. The legacy of these struggles reminds us that a vibrant and independent press remains an essential cornerstone of democracy and a catalyst for societal progress.