

A forgotten document on freedom of cursing and swearing. The anonymous *Vindication of 1746*¹

Abstract

Presumably in 1746, an anonymous pamphlet entitled *A short and modest Vindication of the common Practice of Cursing and Swearing* was published in London. The pamphlet was occasioned by the *Profane Oaths Act* of 1746, which enforced seventeenth-century legislation against cursing and swearing; the *Vindication* criticized the new Act for being disrespectful to British customary liberties, politically dangerous and totally pointless. The interest of the pamphlet lies in highlighting the historical context in which the struggle for freedom of the press and freedom of speech took place, as well as in the use of well-established arguments for freedom of expression, such as those employed by Milton and Hume, to defend a customary linguistic practice.

Introduction

Eighteenth-century England saw the struggle for freedom of speech and freedom of the press achieving important goals; political journals grew and flourished thanks to the decline of government control². A minor but interesting episode of this struggle is embodied in an anonymous pamphlet published in London in 1746, entitled *A short and modest Vindication of the*

¹The paper was presented at the International Conference on Enlightenment and Freedom of Speech, Dept. of Philosophy, Jagellonian University of Kracow, 19-20 April 2017.

²See F. S. Siebert, *Freedom of the Press in England, 1476-1776: the Rise and Decline of Government Controls*, Urbana, University of Illinois Press 1952, pp. 335-374.

*common Practice of Cursing and Swearing*³. The importance of this document, never analyzed before, lies chiefly in highlighting some elements of the historical, political and religious context in which the struggle took place. The *Vindication* was a reaction to the *Profane Oaths Act* of 1746⁴, which made cursing and swearing a crime to be prosecuted by law; the Act was the last of a series of analogous statutes issued by the British Parliament during the seventeenth century. It enforced another Act passed during the reign of William and Mary (1694)⁵, which in turn had enforced a previous Act passed during the Reign of James I (1623)⁶. An earlier statute of 1606 prohibited spoken profanity in any dramatic production⁷; another Act passed during the Interregnum⁸ aimed at the «preventing and suppressing of the detestable Sins of Prophane Swearing and Cursing». References to the criminal nature of profanity can also be found in some statutes of the second half of the century⁹, although Charles II's reign was generally more

³The full title is: *A short and modest vindication of the common Practice of Cursing and Swearing: occasion'd by the new Act of Parliament against the said Practice. By a Gentleman*, London, J. Robinson 1746.

⁴George II, 1746, *An Act more effectually to prevent profane cursing and swearing*, in D. Pickering, *The Statutes at large*, vol. XVIII, Cambridge, J. Bentham 1765, pp. 444-449.

⁵William and Mary, 1694, *An Act for the more effectuall suppressing prophane Cursing and Swearing*, in *The Statutes of the Realm*, London, Dawson of Pall Mall 1965², vol. VI, pp. 591-592.

⁶James I, 1623, *An Act agaynst Swearing and Cursing*, in *The Statutes of the Realm*, vol. IV, pt. 2, pp. 1229-1230.

⁷James I, 1606, *Act to restraine Abuses of Players*, in *The Statutes of the Realm*, vol. IV pt. 2, p. 1097. The Act was the most precise and sweeping piece of censorship addressed to the theatre of Shakespeare and his contemporaries.

⁸June 1650, *An Act for the better preventing of prophane Swearing and Cursing*, in *Acts and Ordinances of the Interregnum, 1642-1660*, ed. C. H. Firth and R. S. Rait, London 1911, pp. 393-396.

⁹See for inst. Charles II, 1661, *An Act for the Establishing Articles and Orders for the regulateing and better Government of His Majesties Navies Ships of Warr & Forces by Sea*, in *The Statutes of the Realm*, vol. V, pp. 311-314. The Act reproached the «unlawfull and rash Oathes Cursings

tolerant in this regard. The reason for such an obstinate attack against a linguistic practice quite common in Britain¹⁰ was chiefly religious: profane swearing and cursing were viewed as a violation of the third commandment, “You shall not take the name of the Lord your God in vain”¹¹, and as a wrong use of God’s gifts. «The Tongue of Man is his *Glory* - wrote the Reverend Josiah Woodward -, and Human Speech a Sort of Miracle in Nature: And it is given to Man, that he might glorify God who gave it to him»¹². Puritans were particularly intransigent in this regard¹³; they gave great importance to discursive decorum, because of its strengthening the social ties within the community. Civil conversation was considered as a means by which men could keep the peace between themselves and their rivals, as well as within the community itself¹⁴; profane

Execrations Drunkennes Uncleannes or other Scandalous Actions» so frequent among the members of the British navy.

¹⁰This was insisted on by the author of the anonymous pamphlet entitled *Perjury the National Sin; or an Account of the Abuses and Violations of oaths among us of this Nation*, London, R. Taylor 1690.

¹¹See for inst. the anonymous *Summons for Swearers, and a Law for the Lips in Reproving Them: Wherein the Chiefe Dissuasives from Swearing are Proposed, the Sleight Objections for Swearing Answered, the Strange Judgments Upon Swearers, Forswearers, Cursers, that Take Gods Name in Vain*, London, M. Simmons 1645.

¹²J. Woodward, *A kind Caution to profane Swearers. By a Member of the Church of England* (1705), B. Dod, London 1746, pp. 6-7. Not all swearing and cursing were viewed as sins, as was clarified by the anonymous *Discourse concerning Profane Swearing an Cursing*, M. Gunn, Dublin 1697, pp. 6-8: swearing which involved invoking God or his creatures to witness the truth of an oath could be considered as lawful «when used in a *solemn* manner on so *important* occasions». Similarly, curses were to be considered as lawful when they consisted in «*Denunciations of the Vengeance of God against sinners which are utter'd by a prophetick Spirit*», but not when they implied «such *rash Wishes of Evil to others or our selves*».

¹³See A. Montagu, *The Anatomy of Swearing*, Philadelphia, University of Pennsylvania Press 2001², pp. 159ff.

¹⁴See P. H. Round, *By Nature and by Custom Cursed: Transatlantic Civil Discourse and New England Cultural Production. 1620-1660*, Hanover-London, University Press of New England 1999, pp. 5-8; B. S. Capp, *England's Culture Wars: Puritan Reformation and Its Enemies in the Interregnum. 1649-1660*, Oxford, Oxford University Press 2012.

swearing and cursing were viewed as a threat against the *concordia socialis*. Almost all the seventeenth-century legislation against profanity was due to the pressure exerted by the Puritans upon government; this was also the case of the 1694 Act, a document of the spiritual and moral ideals animating the Movement for the Reformation of Manners. The Movement, which had spread throughout England at the beginning of the nineties, was supported by the action of several societies; its aim was to suppress profanity, immorality and lewd activities, and its strength lay in a network of informers appointed to detect and denounce cases of immorality. The underlying ideal beneath the capillary action of the reformers was a Puritan conception of moral life, privileging activity rather than passive piety¹⁵; profane cursing and swearing were stigmatized as sins, but also as synonymous with a lack of education. They were associated with the lower classes¹⁶ and frowned upon by a censorious middle class, which considered linguistic purity as a mark of social distinction.

At the beginning of the eighteenth century, the moral and religious austerity promoted by the reformation movement began to lose its appeal because of the growing secularization of English society; this phenomenon had some consequences on common attitudes towards profanity. Proof of this was the anonymous *Vindication*, an attempt to legitimate the practice of

¹⁵See A. G. Craig, *The Movement for the reformation of Manners*, 1688-1715, Doctoral Dissertation, University of Edinburgh 1980; J. Woodward, *An Account of the Life and Progress of the Religious Societies in the City of London, &c, and of the Endeavours for Reformation of Manners which have been made therein*, London 1698.

¹⁶In his *Satyrical reflections on clubs*, London, J. Philips 1710, Edward Ward devoted a chapter to the poor members of “The Surly Club” who came together regularly to practise their swearing. The link between swearing and poverty was further reinforced by the creation of another name to designate it: coarse language came to be known as “Billingsgate Language” or simply “Billingsgate”, a term referring to one of the poorest regions of London. Both Samuel Johnson and Francis Grose listed *Billingsgate* in their dictionaries, as synonymous with bad language.

cursing and swearing against governmental censure. The pamphlet shows a massive use of arguments usually employed to defend freedom of speech and freedom of the press; this adds interest to its content. In the next paragraphs, attention will be paid first to the arguments put forward by the author of the *Vindication*, then to their sources; in the conclusion, the pamphlet's argumentative strategy will be considered in its historical context.

The *Vindication* of 1746

A period of relative liberality with reference to attitudes towards profane cursing and swearing began in the first decades of the eighteenth century, when the activity of the societies for the Reformation of Manners declined significantly. The many legal obstacles they faced (especially the widespread opposition to the use of informers to enforce the Gin Act in 1736)¹⁷ dealt them a lethal blow; the societies disappeared from the historical records in 1738, and only reappeared in 1757 though in a restricted form.

During this intermediate period, a more relaxed attitude towards profane swearing and cursing surfaced: the penalties established by the *Profane Oaths Act* of 1694 were seldom applied¹⁸. However, the climate of general anxiety created by the Jacobite rising of 1745 generated a wave of moral panic, which supported a return to intransigency; a new Act of Parliament against the practice of cursing and swearing was passed in June 1746. The preamble of the Act embodied an allusion to the dramatic events of that period: the ubiquity of the «horrid, impious, and execrable vices of profane cursing and swearing»

¹⁷See G. J. Durston, *Whores and Highwaymen: Crime and Justice in the Eighteenth-Century Metropolis*, London, Waterside Press 2012, pp.112-13.

¹⁸Prosecutions for cursing and swearing declined significantly from 1708 to 1724: see T. McEnery, *Swearing in English. Bad Language, Purity and Power from 1586 to the Present*, London, Routledge, 2005, p. 91.

was said to «justly provoke the divine vengeance to increase the many calamities» which afflicted the nation. The claim was in tune with the spirit of the moral reformation of 1690: cursing and swearing were sins and, as such, were to be punished by the magistrate, the executor of divine vengeance. However, times had changed. The anonymous author of the *Vindication* insisted on this: people were far less concerned about religion than in the past. They were much more interested in their customary privileges, their freedom of speech in particular. To be free to curse and swear was an essential ingredient of freedom of speech, one of those English «excellent liberties» granted by the authority of custom; the new Act was a violation of this liberty and therefore an offence against the nation.

I cannot but lament - so the pamphlet began - with a Mixture of Surprise, that, in this publick spirited Age, in which not only the real Principles of Patriotism are so much inculcated, but even mere Pretensions to it are become *A-la-mode*, no *Englishman* hath yet appeared in the Defence of his Country, against those Incroachments upon her Liberties which she must suffer, if the new Act of Parliament against Swearing, etc., is vigorously enforced.

The *incipit* appealed to the patriotic spirit spreading across England after the Jacobite rising of 1745, in order to legitimate opposition to the Act against cursing and swearing; the new law was described as an attempt to deprive English people of one of their liberties (or rather of more than one: this was the main point of the *Vindication*). To the power of the law the pamphleteer opposed custom as «one of the strongest human Authorities», the true source of the «excellent old laws and most valuable Privileges» of Englishmen: the legislative power, he insisted, had always been obliged to respect these privileges because of their antiquity. Freedom of speech and freedom of the press were the most representative ones:

To speak and write freely on any Subject- the pamphleteer wrote-, is the distinguish'd Birth-Right Privilege of an *Englishman*; a Privilege which the Government hath never once attempted to supersede, except in Cases of Treason against the Throne, or where the Reputation or Property of a single Person is attack'd, which is invading the Province of the Law.

The argument was based on the distinction, proper to many seventeenth-century tolerationist writings, between the province of the law (*i.e.* the preservation of property and peace), and the province of private individuals, which included the right to express one's opinion. The pamphleteer however did not speak of a right to freedom of expression (a universal claim), but rather of a privilege of English people¹⁹:

every Subject of the *British* Crown, who thinks himself qualified to set up for an Author, (...) thinks himself also justly entitled to the Privilege of Scanning, remarking, observing, canvassing, applauding, or censuring the Conduct of his Countrymen, not excepting the most dignified of them, no not even the King himself.

If freedom of speech was to be considered as an English privilege granted by the authority of an ancient custom, so the argument ran, also swearing and cursing were to be viewed as a national privilege being legitimized by the same authority:

It is well known to all who are conversant with the History and Manners of the *English* Nation – wrote the pamphleteer-, that Swearing and Cursing hath been constantly and uninterruptedly practiced by this People, from Time immemorial: And it is equally notorious how tenacious they are of their Customs and Privileges (p. 6).

English people should be left free to curse and swear, insisted the author of *Vindication*, for the same reason they should be

¹⁹ I will return to this point in the Conclusion.

allowed to manifest their opinions freely, *i.e.* because of the strength of an ancient tradition: this was the custom of the nation, an authority against which «all Opposition, whether King’s Commands, parliamentary Resolutions, or the Convictions of Sense and Reason» could do nothing. The same emphasis on the strength of custom was to be found in Hume’s writings; in “Of the Liberty of the Press”, written in 1741, Hume had characterized the special freedom enjoyed by the press in England as a «peculiar privilege», as the pamphleteer would do in the *Vindication*²⁰. He had written:

Nothing is more apt to surprise a foreigner, 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. If the administration resolve upon war, it is affirmed, that, either wilfully or ignorantly, they mistake the interests of the nation; and that peace, in the present situation of affairs, is infinitely preferable. If the passion of the ministers lie towards peace, our political writers breathe nothing but war and devastation, and represent the specific conduct of the government as mean and pusillanimous.

Similarly, but in terms appropriate to a wider public, the pamphleteer wrote:

If a Treaty with any foreign State is concluded, contrary to his [sc. every Subject of the British Crown] Approbation, he takes up his Pen, and, without the least Reserve, lays before the Publick his solemn Protestation against it. If a new Law is made, or an old one abrogated; if a great Man takes a journey, or a Dose of Physick; if a new Book is published, or a young Author admired; in short upon the ordinary or extraordinary Occurrences of every Day throughout the Year, he

²⁰D. Hume, "Of the Liberty of the Press," in ID. *Essays Moral, Political, and Literary*, E. F. Miller ed., Indianapolis, Liberty Fund 1985, p. 9. The first edition of the *Essays* appeared in 1741.

thinks he as a Right to publish his Sentiments, and this he never fails to do with Impunity, no Man saying to him *What do you do?*

It is very unlikely that Hume was the author of the anonymous pamphlet, given the emphasis he placed upon civility, politeness and good manners in his *Essays Moral, Political and Literary*²¹; nonetheless, the author of the *Vindication* might have been inspired by what he had written regarding the English press. His aim was to defend a linguistic practice by making it an essential part of freedom of expression, which according to Hume was well established in England thanks to the history of the country²².

After the appeal to national custom, the pamphleteer introduced a second argument centered around the undesirable consequences of the 1746 Act. He addressed the members of Parliament, claiming that it was a mistake «in such critical and dangerous Times» to introduce «Innovations in the antient Customs and Manners of the People in Matters of such Importance and which may create such universal Discontent». The argument made a strategic use of the appeal to custom: the *Profane Oaths Act* was depicted as a dangerous political move aiming at innovation rather than preserving ancient English traditions. Parliament had acted unwisely, this was the pamphleteer's point, not only because it had been disrespectful to English customs but also because it had failed to consider the circumstances carefully. The Jacobites, the enemies of Britain, might take the opportunity offered by the Act «for infusing Jealousies and Fears into the Minds of the People [...] by

²¹ See for inst. D. Hume, “Of Civil Liberty” and “Of the Rise and Progress of the Arts and Sciences” in ID., *Essays Moral, Political and Literary*, pp. 87-96 and pp. 111-137.

²²Hume explained that the «peculiar privilege» of the English press was the result of Britain's mixed form of government, which was part republican and part monarchical.

misrepresenting the Measures of the Administration». They might be able to

make less artful and honest Folks than themselves believe that all Attempts which the King and Parliament have ever made to annihilate or abridge the common Practice of Swearing, &c. are only so many Blows obliquely aimed at the Freedom of the Press, that Paladium of *British Liberty* (p. 7).

This was a crucial claim, which the pamphleteer strategically put into the mouth of «certain of our News-paper Authors» alarmed by the content of the new Act: they might object «with their usual Force of Logic and Rhetorick» that a free use of swearing and cursing would be part of the freedom of speech, which in turn would be closely linked to the freedom of the press.

The Liberty of the Press – so the pamphlet read -, and the Liberty of Speech, in which the free Use of Cursing and Swearing is certainly included, are so strictly connected together, that like a Child born with two Heads, you cannot hurt the one without making the other cry out (8).

The whole class of «Coffee-house Statesmen» would share the concern expressed by newspaper authors, their views on politics being shaped by them; a climate of general anxiety about English fundamental liberties would spread all over the country. The members of the lower classes would fear being subject to a surplus of government control; some «malicious demagogues» (the Jacobites) might be able to convince them that, by forbidding cursing and swearing, the new Act aimed at imposing a «general silence» on them:

as they have been accustomed to it almost from their Cradles, so they may be neither willing nor able to leave off the Practice: Consequently, they must be reduced to the melancholy Necessity of holding their Tongues, and conversing, like Monsieur *Harlequin*, by dumb Signs; or else, either through Wilfulness or Inadvertency, they must so often incur the Penalties of the Law, as may end in the utter Ruin of themselves and Families (p. 8).

No doubt a law which could not be obeyed and which could have such dire consequences could not be a good law: this was the pamphleteer's point. «The Times are hard, the Wars expensive», he insisted: in these circumstances, people would find it hard to bear the «Alienation of so valuable a Branch of their Liberties, as that of Cursing and Swearing according to their wonted Custom». The allusion to a possible revolt made clear that the consequences of the Act might be unwelcome not only to the citizens, but also to their governors.

Another insinuation the pamphleteer put into the mouth of the “malicious demagogues” strengthened this conclusion, for it made the 1676 Act a possible move «in Favour of the *Pope* and *Pretender*»: the new law was so hostile to English people that they would find it extremely difficult not to think of a catholic conspiracy. No doubt, governors would not want to be suspected of this.

The last argument put forward in the *Vindication* focussed on the motivation of the Act, *i.e.* the impious nature of profane swearing and cursing.

That profane Cursing and Swearing - the pamphleteer wrote- are horrid, impious, and execrable Vices, I can by no means admit, for if this were the Case, the Clergy would certainly have let us know it by their Compliance with the former Acts against these pretended Vices (p.11).

The argument ran as follows: since the clergy had not been particularly concerned in the past about teaching people that cursing and swearing were horrible sins, they could not be sins. So either the clergy had been negligent in the past, because it had not given adequate support to the previous legislation against profanity, or it was guilty in the present of having misinformed the members of the Parliament regarding the presumed impiety of cursing and swearing. In both cases, the responsibility for the Act was to be attributed to the clergy²³, not

²³The pamphleteer referred to the Anglican clergy; dissenters had notoriously been very engaged in the effort to contrast the practice of cursing and swearing. Dissenting ministers had pronounced several sermons on this subject since the nineties; one of these, Samuel Wright's *Discourse against*

to the Parliament: this had «been imposed on by those who brought in the Bill», *i.e.* by churchmen. The clergy was used to behaving in such a way, the pamphleteer remarked: their continuous «puzzling and misleading their Congregations with unessential Points of Faith, and Matters of mere Controversy» had favoured the spreading of atheism and deism across England. Clearly, forbidding cursing and swearing was to be considered as one of these “unessential points of faith” in the pamphleteer’s view; there might be some irony in what he added in this regard, that there might even be something beneficial to religion in swearing and cursing both because they helped to distinguish the Anglicans from the dissenters, who did not use to swear, and because at a time when the name of God was scarcely invoked, those who swore contributed to avoiding its being forgotten.

A final remark in the *Vindication* emphasized the utility of cursing and swearing for the members of the British Army and Fleet: they owed so much of their temper and credit abroad to the possibility of uttering their execrations, insisted the pamphleteer, that no doubt they might be «depriv’d of this their only real or suppos’d Superiority over their Neighbours» by the Act. Also in this case, a substantial damage could be suffered by the nation.

The arguments in the *Vindication*

Joris van Eijnatten²⁴ distinguished three phases in the debate on the freedom of expression. During the first, which began in the late sixteenth century and ended around the time of the Glorious Revolution, freedom of expression was treated primarily as an aspect of the wider issue of religious toleration; during the second, the debate involved a reflection on the idea of preventive censorship, which was abolished in England at the

profane swearing, was published in London in 1732 in second edition. The pamphleteer’s argument was that the Anglican clergy had been much less engaged than the dissenters in this effort.

²⁴See van Eijnatten, *In Praise of Moderate Enlightenment: A taxonomy of Early Modern Arguments in favour of Freedom of Expression*, in E. Powers ed., *Freedom of Speech: the History of an Idea*, Lewisburg, Bucknell University Press 2011, pp. 18-44.

end of the seventeenth century. The third phase was chiefly concerned with affirming the rights of man, but also with discussions of proper social codes, in particular polite conduct that emphasized moderation and sincerity; this was the stage to which the *Vindication* of 1746 belonged. The pamphlet did not contain any attempt to subvert the common idea of polite conduct (something which Swift had magisterially done in his *Polite conversation*, where he had characterized swearing as a noble art necessary to a gentleman)²⁵. Rather, its peculiarity lay in making the free use of swearing and cursing essential to freedom of speech and employing very popular seventeenth- and eighteenth century arguments for freedom of speech and freedom of the press to defend it²⁶.

The first and foremost argument in the *Vindication* was that for nationhood; in the form given to it by Milton in his *Areopagitica* (1644)²⁷, the argument claimed that the habit of searching for the truth was particularly suited to Englishmen and that freedom of the press was a British liberty. Later, the Whig writer Joseph Addison²⁸ and Hume resorted to this argument, which may be characterized as moderate being grounded on national sources rather than on a universal right to freedom of expression²⁹. The anonymous writer of the *Vindication* made nationhood his main point: if freedom of expression was a customary liberty and a birth-right privilege of Englishmen, so was a free use of cursing and swearing. Whoever intended to deprive English people of this liberty was hostile to the nation.

²⁵ J. Swift, *A Treatise on Polite conversation*, J. Faulkner, Dublin 1738.

²⁶ The two claims, that for freedom of the press and that for freedom of speech were not distinguished in the *Vindication*, as in most of the treatises written in the eighteenth century (in William Bollan's work of 1766, for instance, which took it for granted that the one referred to the other. See W. Bollan, *The Freedom of Speech and Writing upon Public Affairs, considered*, London, S. Baker 1766. Bollan was an English lawyer who acted as an agent for the Massachusetts' colony in London).

²⁷ Milton, *Areopagitica and Other Political Writings of John Milton*, Indianapolis, Liberty Fund 1999, p. 41.

²⁸ See Addison's essay in *Spectator*, 7 August 1712, no. 451. Addison opposed the freedom enjoyed by the press in England to French censorship.

²⁹ See E. Powers, *Freedom of Speech the History of an Idea*, Introduction, p. xv.

The argument based on nationhood was supported in the *Vindication* by another argument focusing on history: freedom of speech, and therefore freedom of swearing and cursing, were justified by historical constitutional liberties which should be preserved, the pamphleteer insisted, for the sake of political stability. This argument was in Hume's essay "Of the liberty of the press": there is «nothing of greater importance in every state than the preservation of the ancient government -Hume wrote -, especially if it be a free one»³⁰.

Closely linked to this argument in the *Vindication* was that focusing on social peace. Freedom of expression, and therefore freedom to swear and curse, were characterized as prudential measures because they could prevent people from being driven to extreme group behaviour (rioting and rebellion). The reference to the "malicious demagogues" in the *Vindication* served to support this argument, which was common in seventeenth and eighteenth-century writings on freedom of expression: in the anonymous *Liveryman*³¹, for instance, civil authorities were encouraged to exercise prudence and not react too quickly or too harshly to subdue intemperate or immoderate conversation, so as to prevent people from becoming dispirited or being driven to extremities.

Freedom of expression was also supported in early modern writings through another argument, focusing on the uselessness of censorship in preventing the circulation of scandalous books. Censorship is counterproductive, so the argument ran, because it urges people to read what they are apparently not supposed to read. The argument was used by Milton and, later, by Samuel Johnson to criticize preventive censorship³²; in the *Vindication* it was employed to highlight the ineffectiveness of the 1746 Act. English people were so used to swearing and cursing, the pamphleteer insisted, that the Act could only compel them to pay the penalties due for infractions frequently (with the nasty

³⁰ Hume, "Of the Liberty of the Press", p. 604 (variant reading).

³¹ Anonymous, *The Liveryman: or plain thoughts on publick affairs*, London 1740.

³² S. Johnson, *Lives of the most eminent English Poets*, London 1790², vol. I, pp. 154-155 (life of Milton).

consequences highlighted by the previous argument), but not prevent them from swearing.

The last argument in the *Vindication* pivoted around religion; the allusion to a catholic conspiracy supporting the *Profane Oaths Act* (an insinuation put into the mouths of the “malicious demagogues”) echoed a claim very common in eighteenth century England, which made freedom of expression something peculiarly Protestant. Already Milton had insisted on this point in his *Areopagitica*³³, making censorship a Roman Catholic invention; in the anonymous preface to the 1737 edition of the *Areopagitica*, the Scottish poet James Thomson revived Milton’s claim insisting that a free Protestant country could not be without liberty of the press³⁴. The pamphleteer further developed this argument: he insisted that only Anglicans, not the dissenters (not the Presbyterians in particular), could enjoy freedom of expression because of their liberal attitudes towards swearing and cursing.

To sum up, the *Vindication* criticised the *Profane Oaths Act* for being disrespectful of British customary liberties, politically dangerous and totally pointless; its main argument, which made the Act a violation of freedom of expression, was based on national sources *i.e.* on the idea of an ancient custom which granted a special privilege to English people. No doubt the pamphleteer thought that an argument grounded on a universal right, a strategy quite common in that period to support freedom of expression, could not be adequate to defend the practice of cursing and swearing; he thought that a moderate strategy might be much more appropriate in this regard. This may be easily understood by considering the context in which the *Vindication* was written, as is argued in the Conclusion.

Conclusion

The appeal to natural law to defend freedom of expression was common in eighteenth century writings, as shown for instance

³³J. Milton, *Areopagitica*, pp. 8-13.

³⁴J. Milton, *Areopagitica: A Speech of Mr. John Milton, for the Liberty of Unlicens'd Printing, to the Parliament of England*, London 1738.

by Thomas Heyter's *Essay on the liberty of the press* (1755): Heyter, Bishop of Norwich, characterized freedom of speech as a natural right³⁵. This argument was more radical than the appeal to nationhood, being universal; however, it could not be used with reference to cursing and swearing in the English context. According to eighteenth-century notions of natural law, freedom of speech existed only as long as it was not used to injure or control the rights of another: this conviction was plainly expressed in William Blackstone's *Commentaries on the laws of England* (1765-69), a leading work on the development of English law. Speech that was perceived as defamatory, immoral, subversive or disturbing of the public peace and good order should not be protected: the liberty of speech, like practically every other liberty, was subject to the common good and bound by the rights of others³⁶. The function of society was not merely to protect natural rights for Blackstone, but to civilize human beings, since morality and public order were the only solid foundations of civil liberty. The *Commentaries* expressed a favourable opinion on the *Profane Oaths Act* of 1746: blasphemy, swearing and cursing represented a «public affront to religion and morality on which all governments must depend for support»³⁷, and therefore had to be punished by law. No doubt, the idea that profanity might be one of those types of expression qualifying for protection was not an eighteenth-century idea; this is why the author of the pamphlet only relied on arguments based on national sources. The Puritan ideal of linguistic decorum continued to be vigorous in the eighteenth century and even later in England; the *Profane Oaths Act* was formally repealed only in 1967³⁸.

³⁵[T. Hayter], *An Essay on the Liberty of the Press, chiefly as it respects personal slander*, London, J. Raymond 1755.

³⁶Blackstone's philosophy was fundamental for the framers of the First Amendment of the American Constitution: see P. M. Garry, *Rediscovering a Lost Freedom: The First Amendment Right to Censor Unwanted Speech*, Transaction Publishers, London 2006, p. 40.

³⁷ W. Blackstone, *Commentaries on the Laws of England in Four Books*, vol. II, pp. 324-325.

³⁸See *Criminal Law Act* 1967, ch. 58. The Movement for the Reformation of Manners established a certain perspective on bad language that survives to this day in England: although there were undoubtedly periods of relative

liberality with reference to attitudes towards bad language, this perspective, deeply influenced by Puritanism, continued to be dominant.

