



JOHN STUART MILL AND COLONIAL INDIA:  
LIBERALISM, “BARBARISM,” AND FREE SPEECH

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Despite the massive and ever-growing literature on John Stuart Mill’s free speech arguments, scholars have only recently investigated Mill’s view of free speech in colonial settings. Christopher Barker and Fara Dabhoiwala contend that Mill, who remained the East India Company’s loyal servant for 35 years, rejected free speech rights for colonial Indians. However, no solid basis exists for this claim. Indeed, the extant evidence, though fragmentary, suggests that Mill supported free speech in India. Barker’s and Dabhoiwala’s mishandling of the evidence points up the dangers of arraigning complex historical figures instead of seeking to understand them.

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## INTRODUCTION: THE MULTIFACETED MILL

John Stuart Mill continues to stir trouble in the twenty-first century. Nowhere is Mill's liberal legacy more fiercely contested than in academia, where scholarly opinion ranges from something approaching idolatry to icy disapproval. Heterodox Academy invokes Mill as a leading light, with Jonathan Haidt and Richard Reeves publishing an abridged version of *On Liberty* (entitled *All Minus One*) as a manifesto for the movement. Other scholars have tried to "update" Mill for a new era by adapting his notion of "harm" to include psychological and civic harm.<sup>1</sup> Still others dismiss Mill as an engineer of and apologist for empire, another hypocritical nineteenth-century liberal who supported freedom for the metropole while advocating despotism for the colonial other.<sup>2</sup>

How to reconcile the various versions of Mill—liberal apostle, Romantic utilitarian, faithful servant of the East Indian Company? The volume of Mill scholarship may hinder any effort to answer the question more than it helps: It is now so vast that it seems impossible to master without the help of artificial intelligence: Even if we restrict the topic to Mill and freedom of expression, JSTOR alone houses some 6,000 books and articles that mention Mill and free speech, enough to intimidate even the most energetic reader. The prospect of saying something new about Mill is perhaps yet more daunting.

To their credit, Drs. Christopher Barker and Fara Dabhoiwala have recently paved a fresh pathway through Mill's oeuvre, attempting to explain why Mill did not extend his full-throated support for free speech to what he termed "barbarous" countries. Why, they ask, did Mill insist that colonial Indians, for instance, did not

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<sup>1</sup> See Melina Constantine Bell, *John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm*, 33 UTILITAS 162 (2021). Vincent Blasi has argued for the continuing relevance of Mill's philosophy. Vincent Blasi, *Is John Stuart Mill's On Liberty Obsolete?*, 5 J. FREE SPEECH L. 151 (2024). For a rehearsal of typical criticisms of Mill's argument, see Kristoffer Ahlstrom-Vij, *The Limits of Mill's Case for Free Discussion*, in THE ROUTLEDGE COMPANION TO FREEDOM OF EXPRESSION AND CENSORSHIP 56 (John Steel & Julian Petley eds., 2023). Ahlstrom-Vij's argument is mainly philosophical; while clearly laid out, it is only minimally nourished by historical analysis.

<sup>2</sup> See, e.g., JENNIFER PITTS, A TURN TO EMPIRE: THE RISE OF IMPERIAL LIBERALISM IN BRITAIN AND FRANCE (2005). Others underscore an obverse problem: Mill's imposition of "universal" liberal values on unfamiliar cultures in the name of progress. See, e.g., UDAY SINGH MEHTA, LIBERALISM AND EMPIRE: A STUDY IN NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT (1999). Although both accounts are still valuable, for a useful corrective, see INDER S. MARWAH, LIBERALISM, DIVERSITY AND DOMINATION: KANT, MILL AND THE GOVERNMENT OF DIFFERENCE (2019).

deserve the right (or privilege) of free speech?<sup>3</sup> While copious research has been devoted to Mill's arguments on free speech and to his opinions on empire, surprisingly little has been written on the intersection of the two. The problem, however, is that the query on India, as posed, *est une question mal posée*, a complex question that assumes the conclusion and then seeks to explain it. Barker's claim, for instance, that "Mill consistently supports East India Company (EIC) policy restricting publicity and debate in British India"<sup>4</sup> is belied by a more sensitive examination of the evidence. Dabhoiwala's forays down the documentary trail in his new book, *What Is Free Speech?*, are even more misleading. The real question is how two respected scholars could have limned such skewed portraits of Mill.

### I. MILL, LIBERALISM, AND "BARBARISM"

It is true, as Barker and Dabhoiwala observe, that Mill distinguished the rights and liberties due to people in "advanced" societies from those due to subjects in "barbarous" or "semi-barbarous" countries, and none of what follows is intended to exonerate Mill for his complicity in British colonialism. Here is Mill in *Thoughts on Parliamentary Reform* (1859):

The subjection of any one individual or class to another, is always and necessarily disastrous in its effects on both. That power should be exercised over any portion of mankind without any obligation of consulting them, is only tolerable while they are in an infantine, or a semi-barbarous state. In any civilized condition, power ought never to be exempt from the necessity of appealing to the reason, and recommending itself by motives which justify it to the conscience and feelings, of the governed. In the present state of society, and under representative institutions, there is no mode of imposing this necessity on the ruling classes, as towards all other persons in the community, except by giving to every one a vote.<sup>5</sup>

Like his father James Mill, John Stuart maintained that India was not yet ripe for representative government, distinguishing it from other British colonies like Canada.

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<sup>3</sup> The issue of "rights" for a utilitarian like Mill is a vexed one. Mill often uses language that flirts with rights theory, but at times he sticks to his utilitarian principles and disavows any appeal to rights.

<sup>4</sup> Christopher Barker, *Unfree, Unequal, Unempirical: Press Freedom, British India and Mill's Theory of the Public*, in *FREEDOM OF SPEECH, 1500–1850*, at 237 (Robert Ingram, Jason Peacey & Alex W. Barber eds., 2020).

<sup>5</sup> John Stuart Mill, *Thoughts on Parliamentary Reform*, in 19 *COLLECTED WORKS* 313, 324 (J.M. Robson ed., 1977).

Despite such invidious distinctions, Mill's views on colonialism are exceedingly complex, as Nadia Urbinati, Yvonne Chiu, Robert S. Taylor, David Williams, and Inder S. Marwah have recently argued.<sup>6</sup> Mill avers that a benevolent despot "must transform his own rule" from a matter of "will" to one of "law," not just in settler colonies but in dependencies as well.<sup>7</sup> Mill advocated a period of tutelage only as a precursor to self-government.<sup>8</sup> Indeed, in *Considerations on Representative Government*, Mill deplores the imperial exploitation of India in terms that recognize the "rights of the natives":

Among a people like that of India, the utmost efforts of the public authorities are not enough for the effectual protection of the weak against the strong: and of all the strong, the European settlers are the strongest. Wherever the demoralizing effect of the situation is not in a most remarkable degree corrected by the personal character of the individual, they think the people of the country mere dirt under their feet: it seems to them monstrous that *any rights of the natives* should stand in the way of their smallest pretensions: the simplest act of protection to the inhabitants against any act of power on their part which they may consider useful to their commercial objects, they denounce, and sincerely regard, as an injury.<sup>9</sup>

Mill unquestionably adopted an anti-democratic stance, insisting that the East India Company (EIC), his employer for 35 years, could better defend native rights than either the British government or representative bodies in India; but Mill's acknowledgment of Indians' rights adds an important layer to his political theory.

How do Mill's remarks on the "rights of the natives" bear on the right to free speech in India? Some historical context on Britain's press policy in India will help to ground the discussion. In his magisterial history of India, John Clark Marshman

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<sup>6</sup> Nadia Urbinati, *The Many Heads of the Hydra: J.S. Mill on Despotism*, in J. S. MILL'S POLITICAL THOUGHT: A BICENTENNIAL REASSESSMENT 66 (Nadia Urbinati & Alex Zakaras eds., 2007); Yvonne Chiu & Robert S. Taylor, *The Self-Extinguishing Despot: Millian Democratization*, 73 J. POL. 1239 (2011) (the title alludes to Stanley Fish's "Self-Consuming Artifact," the despot deconstructing himself); David Williams, *John Stuart Mill and the Practice of Colonial Rule in India*, 17 J. INT'L POL. THEORY 412 (2021); MARWAH, *supra* note 2.

<sup>7</sup> Urbinati, *supra* note 6, at 78; Chiu & Taylor, *supra* note 6, at 1241, 1241 n.9. Cf. Duncan Bell, *John Stuart Mill on Colonies*, 38 POL. THEORY 34, 51–52 (2010) (providing a more cynical view, though neither Urbinati nor Chiu and Taylor let Mill entirely off the hook).

<sup>8</sup> Urbinati, *supra* note 6, at 79–80; Chiu & Taylor, *supra* note 6.

<sup>9</sup> 19 COLLECTED WORKS, *supra* note 5, at 571 (emphasis added).

details the conflict over unlocking the Indian press. When, with Macaulay's support, Charles Metcalfe "liberated" the Indian press in 1835, he evidently incurred the displeasure of some at East India House (the EIC's London headquarters), including Director Neil Edmonstone, who feared that "the unrestricted discussion of public subjects and public measures, and the latitude of observation on the Directors and persons high in office, must necessarily diminish that deference and respect in which it is of so much importance that the Government should be held."<sup>10</sup> Marshman contends that Edmonstone's fears proved unfounded, excepting one incident: the Indian Rebellion of 1857, after which "liberty of the press was suspended, just as the Habeas Corpus Act would have been suspended in England on a similar emergency."<sup>11</sup> Marshman had a sound basis for this last claim: Witness the British government's suspension of habeas corpus in response to a series of riots (1817), as well as its passage of the notorious "Six Acts" to quell the unrest surrounding the Peterloo massacre (1819).<sup>12</sup>

Marshman gives us no sense of J. S. Mill's opinion on free speech in India, but in his *History of India*, James Mill had strenuously advocated a free press in India, even as he shared much of his onetime adversary Macaulay's British chauvinism. As K.C. O'Rourke and Barker observe, J. S. Mill cited his father's *Encyclopedia Britannica* article "Liberty of the Press" at length in his own essay "Law of Libel and Liberty of the Press" (1825)<sup>13</sup> and at this early point in his career it seems plausible that he mirrored his father's views on press freedom in India, despite Barker's claims to the contrary. Georgios Varouxakis maintains that, even after his mental crisis (1826–1830) John Stuart "must have continued to employ his father's arguments and to follow James Mill's line, given that he was being supervised by him most of the time. James Mill believed in a reforming empire, one that would apply

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<sup>10</sup> 3 JOHN CLARK MARSHMAN, *THE HISTORY OF INDIA: FROM THE EARLIEST PERIOD TO THE CLOSE OF LORD DALHOUSIE'S ADMINISTRATION* 91–93 (1867). On the Court of Directors' objections, see also *East India (Liberty of the Press)*, in 29 ACCOUNTS AND PAPERS OF THE HOUSE OF COMMONS 159, 159–60 (1857).

<sup>11</sup> MARSHMAN, *supra* note 10, at 93.

<sup>12</sup> K.C. O'ROURKE, JOHN STUART MILL AND FREEDOM OF EXPRESSION: THE GENESIS OF A THEORY 12–13 (2001); Michael Demson & Regina Hewitt, *Introduction*, in *COMMEMORATING PETERLOO: VIOLENCE, RESILIENCE AND CLAIM-MAKING IN THE ROMANTIC ERA* 1, 13–14 (Michael Demson & Regina Hewitt eds., 2019).

<sup>13</sup> O'ROURKE, *supra* note 12, at 19; Barker, *supra* note 4, at 239.

rational, scientific and enlightened ideas from above in an effort to introduce good institutions for the peoples of India.”<sup>14</sup>

Although the “empire-of-opinion” cadre at India House, which included Metcalfe, opposed this top-down philosophy, encouraging instead an appeal to Indian public opinion,<sup>15</sup> the two groups did not necessarily disagree about press freedom. As Barker recognizes, while James Mill acknowledges the “dangers” of “an unrestrained use of the press” in the Indian context, he insists that “[t]here is no people, however, among whom [press freedom] may not be introduced by degrees. The people of India, it is certain, ought to receive, as one of the indispensable instruments of improvement, as much of it as they can bear; and this would soon prepare them, if properly encouraged, for the receipt of more, and hence, by rapid steps, for the enjoyment of it, in all its fulness, and all its efficiency.”<sup>16</sup> This despite his opposition to representative government in India.<sup>17</sup> James Mill, it is worth noting, enlisted his son John Stuart as an editor of the *History of India*.<sup>18</sup> In his essay on libel, drawn partly from his father’s *Encyclopedia Britannica* article, Mill *filis* indignantly declares that the “absolute power of suppressing all opinions would amount, if it *could* be exercised, to a despotism far more perfect than any other which has yet existed,”<sup>19</sup> suggesting that there are various grades of despotism, some of them compatible with free speech.

In the 1830s, Macaulay too squared the circle of a free press under despotic government, invoking the name of his erstwhile nemesis James Mill. In a July 1833

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<sup>14</sup> GEORGIOS VAROUXAKIS, *LIBERTY ABROAD: J. S. MILL ON INTERNATIONAL RELATIONS* 117 (2013).

<sup>15</sup> *Id.* See also C.A. BAYLY, *EMPIRE AND INFORMATION: INTELLIGENCE GATHERING AND SOCIAL COMMUNICATION IN INDIA, 1780–1870*, at 218 (1999).

<sup>16</sup> 3 JAMES MILL, *A HISTORY OF BRITISH INDIA* 360 (1817); Barker, *supra* note 4, at 247–48.

<sup>17</sup> See WILLIAM FOSTER, *THE EAST INDIA HOUSE: ITS HISTORY AND ASSOCIATIONS* 204–05 (1924); see also Thomas Babington Macaulay, *A Speech Delivered in the House of Commons on the 10th of July, 1833*, in 1 *ARCHIVES OF EMPIRE* 54, 55–56 (Barbara Harlow & Mia Carter eds., 2003) (“One gentleman . . . I mean Mr. Mill . . . has written strongly, far too strongly, I think, in favor of pure democracy. He has gone so far as to maintain that no nation which has not a representative legislature, chosen by universal suffrage, enjoys security against oppression. But when he was asked before the Committee of last year whether he thought representative government practicable in India, his answer was, ‘Utterly out of the question.’”).

<sup>18</sup> See NICHOLAS CAPALDI, *JOHN STUART MILL: A BIOGRAPHY* 13 (2004).

<sup>19</sup> 19 *COLLECTED WORKS*, *supra* note 5, at 7, *quoted in* O’ROURKE, *supra* note 12, at 19.

speech, Macaulay insists, partly on James Mill's authority, that "[i]n India you cannot have representative institutions . . . at the present time . . . . We have to ingraft on despotism those blessings which are the natural fruits of liberty."<sup>20</sup> In spite of his rigid conviction that India was not yet ready for democracy, Macaulay pushed for freedom of the Indian press in 1835, as James Mill had before him. Marshman praised Macaulay's "Minute" on the freedom of the press, dated 16 April 1835, as "worthy of the author of the Essay on Milton."<sup>21</sup> Macaulay further defended his position on the Indian press in a September 1836 letter to the EIC's Court of Directors.<sup>22</sup> Even the king had objected to the lifting of press restraints, but Macaulay remained "unrepentant."<sup>23</sup> J. S. Mill, to be sure, differed from Macaulay on many issues, but the cases of Macaulay, James Mill, and others show that prominent English liberals of this period frequently regarded press liberty as perfectly compatible with enlightened despotism. So, after all, had some eighteenth-century European monarchs.<sup>24</sup>

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<sup>20</sup> Macaulay, *supra* note 17, at 55–56.

<sup>21</sup> MARSHMAN, *supra* note 10, at 92. For Macaulay's "Minute," see Thomas Babington Macaulay, *Minute*, quoted in 1 GEORGE OTTO TREVELYAN, THE LIFE AND LETTERS OF LORD MACAULAY 390 (1876);

<sup>22</sup> TREVELYAN, *supra* note 21, at 392.

<sup>23</sup> See ZAREER MASANI, MACAULAY: PIONEER OF INDIA'S MODERNIZATION (2012). Macaulay's notorious Education "Minute" of the same year, however, is an urtext of British imperial arrogance. Thomas Babington Macaulay, *Minute* (Feb. 2, 1835), <https://perma.cc/UV7B-G4MM>. Macaulay asserts the "intrinsic superiority of the Western literature" and alleges that "a single shelf of a good European library was worth the whole native literature of India and Arabia." *Id.* ¶ 10. He further alleges that "[i]t is . . . no exaggeration to say that all the historical information which has been collected from all the books written in the Sanscrit language is less valuable than what may be found in the most paltry abridgments used at preparatory schools in England. In every branch of physical or moral philosophy, the relative position of the two nations is nearly the same." *Id.* ¶ 11. J. S. Mill, for his part, rejected Macaulay's views on Indian education: He "opposed Bentick's resolution," which endorsed Macaulay's "Minute," and he "supported teaching Arabic and Sanskrit" in India. PARI-MALA V. RAO, BEYOND MACAULAY: EDUCATION IN INDIA, 1780–1860, at 164 (2020); see also *id.* at 165 (discussing Macaulay, Metcalfe, and the Indian press); Urbinati, *supra* note 6, at 85 n.25. In a comment bearing on freedom of speech in India, Mill averred that it was "altogether chimerical to expect that the main portion of the mental cultivation of a people can take place through the medium of a foreign language." 17 COLLECTED WORKS, *supra* note 5, at 1970 n.3, quoted in Urbinati, *supra* note 6, at 95.

<sup>24</sup> On "Enlightened despotism" and the press, see generally FREEDOM OF SPEECH: THE HISTORY OF AN IDEA (Elizabeth Powers ed., 2011); EDOARDO TORTAROLO, THE INVENTION OF FREE PRESS:

Although efforts to reconcile free speech with despotism may strike us as incongruous—a kind of political solecism—such a dual stance was not uncommon during Mill’s time. James Silk Buckingham, a champion of press liberty in India, distinguished the right to free speech from the right to representative government, suggesting that the orientalist and judge Sir William Jones supported the former in India but not the latter.<sup>25</sup> Indeed, at one point in *Considerations on Representative Government*, the younger Mill entertains the possibility that press freedom can consist with some forms of despotism, though he hedges this hypothetical scheme with caveats, and he seems mainly concerned here with Europe.<sup>26</sup> One can, however, find solid evidence of J. S. Mill’s support for free speech in India.

In an otherwise rave review of Macaulay’s 1838 *Penal Code for India*, J. S. Mill expresses ambivalence about Macaulay’s provision that the truth of a statement should always be proof against libel charges, even in matters related to private life, but Mill’s ambivalence tracks his complicated view of libel law in the English context. Here is Mill on Macaulay’s proposal for India:

By the proposed code, nothing which is true is a libel; or rather (for the Commissioners do not adopt that most ill-chosen word from English law) is defamation: no action can be maintained or penalty inflicted for attacks on reputation, unless the court, having entered into the evidence of truth or falsehood, pronounces the imputation to be false. And the Commissioners defend this provision at some length in their notes; but in a manner which fails to convince us. Nothing can be more proper than that the truth of a charge should be its justification, in all cases in which either a court of justice or the public are competent judges of the subject. But in matters which relate to private life, how can either the one or the other be made cognizant of the circumstances on which the morality or immorality of the act principally depend?<sup>27</sup>

Mill contends—dubiously—that the details of a “family quarrel,” for example, lie beyond the court’s remit: “Let any candid person ask himself, how far advanced he would be, in any such case that he is well acquainted with, towards forming a just estimation of the conduct of the parties, if he knew only such naked facts as would have admitted of being proved in a court of justice?”<sup>28</sup>

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WRITERS AND CENSORSHIP IN EIGHTEENTH CENTURY EUROPE (2016); David A. Bell, *The Enlightenment, Then and Now*, 5 LIBERTIES (2025), <https://perma.cc/JGX3-L4GW>.

<sup>25</sup> 1 ORIENTAL HERALD AND COLONIAL REVIEW 140 (James Silk Buckingham ed., 1824).

<sup>26</sup> 19 COLLECTED WORKS, *supra* note 5, at 401–02.

<sup>27</sup> 30 COLLECTED WORKS, *supra* note 5, at 29.

<sup>28</sup> *Id.*



Mill's language in this passage is strikingly similar to that of his 1834 position statement on British libel law. Commenting on Daniel O'Connell's "Bill for the Liberty of the Press," particularly in relation to libel, Mill emphasizes the distinction between the public and private spheres:

Mr. O'Connell goes farther than we are able to follow him, when he proposes that in all cases of private libel, truth should be a justification. Where, indeed, the imputation is not upon the private, but upon the public character of a public man . . . , we think, with Mr. O'Connell, that the truth of the charge ought to be a sufficient defence; and we would even allow the alleged libeller to clear himself, though the charge be false, by showing that he had good grounds for believing it to be true. But we would not permit the press to impute, even truly, acts, however discreditable, which are in their nature private. . . . Every one knows how easy it is, without falsifying a single fact, to give the falsest possible impression of any occurrence; and, in the concerns of private life, the whole morality of a transaction commonly depends upon circumstances which neither a tribunal nor the public can possibly be enabled to judge of.<sup>29</sup>

Mill proceeds to cite the example of a "family quarrel," the intricacies of which, he contends, lie beyond the court's purview, the very same example he presented four years later in his discussion of Macaulay's Indian Penal Code. For Mill, in both Britain and British India, the truth should provide an iron defense against libel charges in matters of public interest, but it should not necessarily provide a legal shield in matters of private concern. Mill, in effect, places England and India on a par.

Predictably, the government in British India curbed native press freedom—for a time—after the Indian Rebellion of 1857. On 4 July 1857, the "Government of India" registered its "full and unanimous concurrence" with Governor General

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<sup>29</sup> 6 COLLECTED WORKS, *supra* note 5, at 166–67. For Mill's position on English libel law and the public-private distinction, see also O'ROURKE, *supra* note 12, at 35–36; Jonathan Riley, *J. S. Mill's Doctrine of Freedom of Expression*, 17 UTILITAS 147, 168–71 (2005); Barker, *supra* note 4, at 238. Mill seems to have borrowed this argument from Coleridge. See O'ROURKE, *supra* note 12, at 44. Mill's view of the relationship between the public and private spheres evolved later in life. His change of view is especially evident in a series of articles jointly authored with Harriet Taylor from 1849 to 1853 and in *THE SUBJECTION OF WOMEN* (1869). See also Rita Manning, *The Tyranny of Bodily Strength: Harriet Taylor Mill and John Stuart Mill on Domestic Violence*, in ANALYZING VIOLENCE AGAINST WOMEN 151 (Wanda Teays ed., 2019); Helen McCabe, *John Stuart Mill, Utility and the Family: Attacking 'the Citadel of the Enemy'*, 272 REVUE INTERNATIONALE DE PHILOSOPHIE 225 (2015). For Urbinati's commentary on Mill's discussion of private despotism, see Urbinati, *supra* note 6, at 79–80.

Canning's proposal to restrict the press for one year. In doing so, however, Lord Harris, Governor of the Madras Presidency in India, insisted that the government was "act[ing] in complete accordance with the opinions of every member of Sir Charles Metcalfe's Government, which passed, and of Lord Auckland's Government, which supported, the Act for the freedom of the press, which has now been temporarily suspended," explaining that Metcalfe and his colleagues had noted that in case of emergency, press freedom could be held in abeyance. The length, density, and painstaking care of the British government's defense of temporary press regulations are notable, indicating how entrenched press freedom had been from 1835 to 1857.<sup>30</sup>

Significantly, in his "Minute," Lord Harris notes that he does not support "censorship of the press"—meaning, it seems, that he would not require an imprimatur for each publication—but he emphasizes that he would hold those who publish falsehoods to account: "The liberty of the press is a most important and vital principle in the best interests of humanity, and cannot on any account be interfered with, but that freedom has been won and granted in the interest of eliciting truth, not for disseminating falsehood"<sup>31</sup> Even if Mill agreed with Harris, then, on the new, temporary press measures—of which there is no evidence—he and the EIC were determined not to be cast as censors.

Barker observes that Mill "endorsed" Thomas Munro's 12 April 1822 "Minute" in favor of press controls, among other documents sent to Parliament after the Indian Rebellion, including a note that Munro's "Minute" had been "remarkable and prophetic" on the dangers of press liberty in India.<sup>32</sup> But the word "endorse" does hidden work here. Mill signed the EIC's correspondence to Parliament, noting that the attached papers were "True Copies," but the document from which

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<sup>30</sup> See The Governor-General of India in Council, *Letter to the Court of Directors of the East India Company* (July 4, 1857), in FURTHER PAPERS (NO. 5) RELATIVE TO THE MUTINIES IN THE EAST INDIES 91–95 (1857).

<sup>31</sup> George Harris, *Extract Minute* (May 2, 1857), in 29 ACCOUNTS, *supra* note 10, at 169. Under the new regulations, the printers needed to obtain licenses for their presses, often with conditions attached, but they did not need to obtain an imprimatur for each publication. The Act also mandated, however, that copies of printed books and newspapers be forwarded to a magistrate. For the Press Act of 1857, see THE BOMBAY ALMANACK AND BOOK OF DIRECTION 236–37 (1858), and 3 WILLIAM THEOBALD, THE ACTS OF THE LEGISLATIVE COUNCIL OF INDIA, FROM 1856 TO 1859, at 310–14 (1861).

<sup>32</sup> Barker, *supra* note 4, at 246.

Barker quotes is in fact Lord Harris's "Extract Minute," not Mill's. To all appearances, the words "remarkable and prophetic" are Harris's, and we have no warrant for concluding that Mill subscribed to the arguments that Harris and Munro had formulated.<sup>33</sup> Mill was simply witnessing the various Minutes in his capacity as "Examiner of India Correspondence"; in this instance, he was more a notary than an author.

The most tantalizing clue to Mill's opinion on press freedom in India appears in an 1852 House of Lords interview concerning the renewal of the EIC's charter. In the course of examining Mill, the select committee raises the following question about the Indian press:

3151. Do you see any difficulties likely to accrue from the unlicensed liberty of the press?

[Mill:] I think both the dangers and the advantages of the free press in India have been very much overrated: that the dangers were overrated is proved by the fact; it was anticipated by many people, that if full license were allowed to the press, it would drive us out of India altogether.<sup>34</sup>

Although Mill adopts a stance of studied neutrality, his remarks seem calculated to allay concerns about the risks of press freedom in India. Mill's answer to a follow-up question is equally suggestive:

3155. You said that not only were the dangers that were expected to accrue from the establishment of a free press in India exaggerated, but also that the expected advantages were exaggerated. Is that your opinion?

[Mill:] It is. As long as the great mass of the people of India have very little access to the press, it is in danger of being an organ exclusively of individual interests. The English newspaper press in India is the organ only of the English society, and chiefly of the part of it unconnected with the Government. It has little to do with the natives, or with the great interests of India.<sup>35</sup>

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<sup>33</sup> George Harris, *Extract Minute* (June 20, 1857), in 29 ACCOUNTS, *supra* note 10, at 171.

<sup>34</sup> REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF LORDS, APPOINTED TO INQUIRE INTO THE OPERATION OF THE ACT 3 & 4 WILL. 4, C. 85, FOR THE BETTER GOVERNMENT OF HER MAJESTY'S INDIAN TERRITORIES 329 (1852).

<sup>35</sup> *Id.* *The Calcutta Review* took umbrage at Mill's remarks, bemoaning "the tone of contempt" with which Mill had discussed the Indian press. See 18 CALCUTTA REV. 439, 480–89 (1852). In 1859, however, the same year that Mill published *ON LIBERTY*, a more sympathetic journalist from the BOMBAY OVERLAND TIMES reflected that "When Mr. John Stuart Mill was examined before the

His answer is guarded, but Mill strongly implies that a free press directed to “the great mass of the people of India” and addressing itself to “the great interests of India” would reap rewards unavailable in the current system. Such comments, of which Barker takes no note, undermine his contention that Mill “consistently” backs the East India Company’s policy of “restricting . . . debate in British India” and his claim that “Mill holds throughout his life that India is not yet ready for discussion, debate and diversity.”<sup>36</sup>

Mill’s recent biographer, Nicholas Capaldi, observes that “Mill was convinced that the East India Company was ‘the protector of the natives of India against the avarice & domineering spirit of rapacious European adventurers.’ He had disapproved of the manner in which the [1857] mutiny was repressed and believed that the move to abolish the company was caused by the unwillingness of the company to favor white residents over natives. During his tenure, Mill had supported the move to involve native Indians in the administration in order to give them the experience of self-government.”<sup>37</sup> When Mill writes that the “[t]he Egyptian hierarchy, the paternal despotism of China, were very fit instruments for carrying those nations up to the point of civilization which they attained” and yet, “having reached that point, they were brought to a permanent halt, for want of mental liberty and individuality. . . .” he seems to argue for the necessity of free thought in colonial dependencies like India.<sup>38</sup> Presumably, Mill did not hold that, after years of benevolent despotism, members of Indian society would spontaneously attain “mental liberty and individuality” without enjoying at least partial freedoms along the way. Indeed, free speech may be the Millian route to “civilization,” when coupled with (condescending, liberal) imperial tutelage in other areas of governance.<sup>39</sup>

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Lords in 1852, we find him repeatedly lamenting that there was no efficient public opinion brought to bear upon the Indian Government”; in *NEWRY TELEGRAPH*, Aug. 25, 1859, at 3b.

<sup>36</sup> Barker, *supra* note 4, at 237, 251.

<sup>37</sup> CAPALDI, *supra* note 18, at 243. Cf. ERIC STOKES, *THE ENGLISH UTILITARIANS IN INDIA* 255 (1959) (“Even John Stuart Mill, who in theory contemplated with equanimity the progressive admission of Indians to high office, and eventually the granting of self-government to them, did not consider that the time was ripe in 1853 for the introduction of a single Indian member into the Legislative Council.”). But Mill’s position, further discussed below, is more complex than Stokes allows. See REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF LORDS, *supra* note 34, at 325.

<sup>38</sup> 19 COLLECTED WORKS, *supra* note 5, at 396.

<sup>39</sup> This was James Mill’s view. See *supra* text accompanying note 29.

The passage in *On Liberty* touching “free and equal discussion” to which Barker alludes—“Mill never explains exactly what he means in *On Liberty*’s Chapter One when he explains that India lacks [the capacity for] free and equal discussion”<sup>40</sup>—actually refers to an earlier state of Indian development: “Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne.”<sup>41</sup> There is no indication that Mill is here equating mid-nineteenth-century India with late-sixteenth-century India, nor that he is equating EIC governance with Akbar’s imperial rule. To my knowledge, Mill draws no such equivalence in any of his writings.<sup>42</sup> The passage’s wording too is worth pausing over: Mill does not say that free discussion is incompatible with even Akbar’s style of despotism, which, as a matter of historical fact, it was not, as Akbar embraced free speech as well as religious toleration.<sup>43</sup> Mill insists, rather, that his own “Liberty principle,” a

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<sup>40</sup> Barker, *supra* note 4, at 251.

<sup>41</sup> JOHN STUART MILL, *ON LIBERTY* 81 (David Bromwich & George Kateb eds., 2003).

<sup>42</sup> In *Considerations on Representative Government*, Mill notes that “[u]nder a native despotism, a good despot is a rare and transitory accident: but when the dominion they are under is that of a more civilized people, that people ought to be able to supply it constantly,” 19 *COLLECTED WORKS*, *supra* note 5, at 567, implicitly contrasting Asian and European forms of despotism, in favor of the latter. Parliament had, of course, nationalized the EIC in 1858, the year before Mill published *ON LIBERTY*, and Mill repeatedly denounced the new mode of direct rule as tyranny, sharply distinguishing it from Britain’s indirect rule of India through a body of enlightened, technocratic elites: for Mill, the former incarnation of the EIC. *See, e.g., id.* at 568 (especially the “choice of despotisms” passage and surrounding text). *See also* JOHN STUART MILL, *Memorandum of the Improvements in the Administration of India During the Last Thirty Years* (1858), *reprinted in* 30 *COLLECTED WORKS*, *supra* note 5, at 93. Mill underscores the improvement of the post, the railway, and the system of roads, along with the introduction of the electric telegraph, all crucial vehicles of public and private communication (though the new technologies and infrastructure, without doubt, aided British surveillance of Indian society as well). *Id.* at 110, 131–41. He expatiates on the development of the judicial system and the police force, and he underlines the suppression of “thuggee,” infanticide, “suttee” (sati), slavery, and human sacrifice. *Id.* at 122–24. Toward the end of the memorandum, Mill touts the innovations and refinements in education at all levels, including “female education.” *Id.* at 146–48. Even if the *Memorandum* served rhetorical ends by defending the Company from its critics, Mill clearly did not regard Indian society as stagnant.

<sup>43</sup> As Barker points out, Leicester Stanhope maintained that the people of India enjoyed more expansive speech privileges and greater access to education under Akbar than they did under British rule. Barker, *supra* note 4, at 246. Stanhope was writing in 1823, however, before the Act establishing

concept much broader than free speech alone, does not apply until “mankind have become *capable of being improved* by free and equal discussion.”<sup>44</sup>

Indeed, in *Considerations on Representative Government*, Mill describes an enlightened despotism consistent with some measure of negative liberty, anticipating Isaiah Berlin’s celebrated framing of the idea in “Two Concepts of Liberty”: Mill dubs such benevolent despotism “the government of leading-strings,” which “owing to the impossibility of descending to regulate all the minutiae of industry and life, necessarily leaves and induces individuals to do much of themselves.” In a coda, Mill adds: “I need scarcely remark that leading-strings are only admissible as a means of gradually training the people to walk alone.”<sup>45</sup>

In the end, it is hard to dispute Barker’s conclusion that Mill was caught in the “reformer’s trap” of a civilizing imperialism.<sup>46</sup> Yet, until we recognize the subtlety and sophistication of Mill’s argument, we cannot appreciate why liberal imperialism ensnared so many brilliant nineteenth-century minds and why, under various guises, it has attracted devoted adherents to this day.<sup>47</sup>

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press freedom in India—indeed, before the lenient years of enforcement that preceded the collapse of pre-censorship. See LEICESTER STANHOPE, *SKETCH OF THE HISTORY AND INFLUENCE OF THE PRESS IN BRITISH INDIA* 4–5, 23, 49, 87, 139 (1823). In any case, that Akbar was renowned for his commitment to free discussion merely reinforces the idea that some forms of despotism have, historically, made room for free speech. On Akbar, see JACOB MCHANGAMA, *FREE SPEECH: A HISTORY FROM SOCRATES TO SOCIAL MEDIA* 88–90 (2022).

<sup>44</sup> MILL, *supra* note 41, at 81. Barker may be right that Mill still considers Indian society unprepared for “equal discussion,” on account of the caste system and society’s treatment of women. Barker, *supra* note 4, at 251. In the phrase “free and equal discussion,” Mill seems to hint at the distinction between parrhesia and isegoria: free speech versus equal speech.

<sup>45</sup> 19 COLLECTED WORKS, *supra* note 5, at 396. This passage is also partially quoted in Stephen Holmes, *Making Sense of Liberal Imperialism*, in J. S. MILL’S POLITICAL THOUGHT, *supra* note 6, at 335. Nadia Urbinati, in a different context, takes note of the “oxymoron” that “in a despotic system a certain degree of negative freedom can subsist with no danger to the stability and longevity of the system. As Isaiah Berlin taught us, freedom as noninterference does not require a democratic government; a nonliberal decent authoritarian government might be enough.” Urbinati, *supra* note 6, at 89.

<sup>46</sup> Barker, *supra* note 4, at 251.

<sup>47</sup> See, for example, Stephen Holmes’s virtuoso Millian reading of the Iraq War (2003–11), an invasion that was catalyzed by a compound of neoconservative and liberal imperialist motives. Holmes, *supra* note 45. For Holmes, the Iraq War failed even Millian standards of liberal imperialism, despite more than a century of international experience having been gained since Mill’s time.

## II. MILL, PRESS FREEDOM, AND THE INDIAN PUBLIC SPHERE

Like Barker, Dabhoiwala contends that Mill opposed free speech in India. But if Barker finds what he expected to find in Mill, Dabhoiwala takes artistic license with the evidence, sculpting it to fit his argument. Even his framing of the free speech issues is commonly off-kilter. For example, Dabhoiwala exaggerates the distance between nineteenth-century British and Anglo-Indian legal norms on free speech: “Even as the British continually congratulated themselves on being the greatest champions of free expression the world had ever seen . . . , colonial definitions of press and speech liberty were always shadowed by the spectre of ‘disloyal’ or ‘seditious’ expression.”<sup>48</sup> However, seditious libel was a crime in Britain too.<sup>49</sup> William H. Wickwar notes that “during the three years 1819, 1820, 1821 there were over one hundred and twenty prosecutions on charges of seditious and blasphemous libel.”<sup>50</sup>

Dabhoiwala observes that Macaulay’s proposed code for India, drafted in 1837 and implemented in 1862, differed from English law, especially on personal slander and religious insult. But he inflates the differences. For example, Dabhoiwala errs in maintaining that the English crime of blasphemy was “seldom prosecuted.”<sup>51</sup>

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See also Michael Walzer, *Mill’s ‘A Few Words on Non-Intervention,’* in J. S. MILL’S POLITICAL THOUGHT, *supra* note 6, at 348 (quoting JOHN STUART MILL, *A Few Words on Non-Intervention*, reprinted in 21 COLLECTED WORKS, *supra* note 5, at 109–24); Addis Goldman, *Finding Fukuyama’s Ends: Between Aspirations and History*, HEDGEHOG REV. (July 22, 2021), <https://perma.cc/7R54-FSXL>.

<sup>48</sup> FARA DABHOIWALA, WHAT IS FREE SPEECH? 227 (2025).

<sup>49</sup> *Id.* at 234. Dabhoiwala momentarily recognizes Britain’s continuing repression by gesturing toward a legal case that Mill himself cites in ON LIBERTY. *Id.* at 217.

<sup>50</sup> WILLIAM H. WICKWAR, THE STRUGGLE FOR THE FREEDOM OF THE PRESS, 1819–1832, at 17 (1928). On the nineteenth-century British press, see also DONALD THOMAS, A LONG TIME BURNING: A HISTORY OF LITERARY CENSORSHIP IN ENGLAND (1969); Donald Thomas, *Press Prosecutions of the Eighteenth and Nineteenth Centuries: The Evidence of King’s Bench Indictments*, 32 LIBRARY 315 (1977); Philip Harling, *The Law of Libel and the Limits of Repression, 1790–1832*, 44 HIST. J. 107 (2001); Martin Hewitt, *The Press and the Law*, in JOURNALISM AND THE PERIODICAL PRESS IN NINETEENTH-CENTURY BRITAIN 147 (Joanne Shattock ed., 2017).

<sup>51</sup> See LEONARD W. LEVY, BLASPHEMY: VERBAL OFFENSE AGAINST THE SACRED, FROM MOSES TO SALMAN RUSHDIE (1995); JOSS MARSH, WORD CRIMES: BLASPHEMY, CULTURE, AND LITERATURE IN NINETEENTH-CENTURY ENGLAND (1998); BLASPHEMY IN BRITAIN AND AMERICA, 1800–1930 (David Nash ed., 2010). Seditious and blasphemous libel cases declined over the course of the nineteenth century, as juries became more reluctant to convict and the government became leery of drawing

The India Code's "sweeping prohibition on intentionally 'wounding the religious feelings of any person'"<sup>52</sup> had, incontestably, a wider scope than English blasphemy law, but it finds a rough parallel in Lord Ellenborough's definition of libel: "Upon the subject of libel, it may be as well for me to observe . . . that, by the law of England, there is no impunity to any person publishing any thing that is injurious to the feelings and happiness of an individual, or prejudicial to the general interests of the state."<sup>53</sup> Of this opinion, Mill dryly remarks: "The latitude which Judges allow themselves in declaring publications to be libellous, may be judged of by the example of the late Lord Ellenborough, who said that a libel was any thing which hurts the feelings of any body."<sup>54</sup>

While he cites a handful of Britons who supported free speech for Indians, Dabhoiwala neglects Charles Metcalfe, who in 1835 introduced press freedom into India. Metcalfe denied that

"the essence of good government" was "to cover the land with darkness." "It cannot be that we are permitted by Divine authority to be here merely to collect the revenues of the country, pay the establishments necessary to keep possession, and get into debt to supply the deficiency." "If India could only be preserved as a part of the British Empire by keeping its inhabitants in a state of ignorance, our domination would be a curse . . . and ought to cease." The British were in India "to pour the enlightened knowledge and civilisation, the arts and sciences of Europe, over the land, and thereby improve the condition of the people."<sup>55</sup>

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attention to obnoxious publications through public trials. *See generally* THOMAS, *supra* note 50; Thomas, *supra* note 50; Harling, *supra* note 50. Nonetheless, the bond required by the 1819 Act to ensure against sedition and blasphemy may have exerted a chilling effect until the law expired in 1869.

<sup>52</sup> DABHOIWALA, *supra* note 48, at 234.

<sup>53</sup> King v. Cobbett (24 May 1804), *reprinted in* 29 A COMPLETE COLLECTION OF STATE TRIALS 1, 49 (Thomas Jones Howell ed., 1821).

<sup>54</sup> 22 COLLECTED WORKS, *supra* note 5, at 92.

<sup>55</sup> EDWARD THOMPSON, THE LIFE OF CHARLES, LORD METCALFE 321 (1937) (alteration in original). On Metcalfe's freeing of the Indian press, *see also* NANCY GARDNER CASSELS, SOCIAL LEGISLATION OF THE EAST INDIA COMPANY 376–80 (2010).



Without question, this is liberal condescension of a peculiarly British flavor, but it is a far cry from the illiberal imperialism of Lord Ellenborough (the Younger) and his ilk, who did indeed wish to keep the Indian people in the dark.<sup>56</sup>

On top of ignoring Metcalfe, Dabhoiwala barely touches on the 1835 measure freeing the Indian presses, and when he does, he gets it wrong. He insists that “even after the 1820s regulations were repealed in India, which happened in 1835, only newspapers and printing presses licensed by the government were allowed to operate there.”<sup>57</sup> If this were true, it would indeed point to a stark difference between Britain and India. However, the Indian Printing Presses Act of 1835 repealed the licensing mandate enacted in 1823.<sup>58</sup> The 1835 Act required only formal acknowledgment on the part of printers and publishers that they operated a specific press and published a given periodical; there was no licensing procedure. Similar legal requirements obtained in England.<sup>59</sup>

Unaccountably, Dabhoiwala does not mention John Connon, proprietor and sometime editor of the *Bombay Gazette*, who speaks to this very issue while defending Indian press freedom after the Indian Rebellion. Invoking Milton’s *Areopagitica* in the epigraph of his *Letter to R.D. Mangles, Esq., M.P., Chairman of the East India Company, in Defence of the Liberty of the Press in India*, Connon observes that even the relatively modest 1835 Indian regulations went unenforced until 1857:

As I remarked in my memorial to the Court of Directors, the few and simple provisions of Act XI. of 1835, as to public registry of property in presses, had been in many instances disregarded in India—never by me; and no Government, so far as I know, had taken the least notice of this misdemeanour [*sic*], till, all of a sudden, in the height

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<sup>56</sup> For the younger Lord Ellenborough’s opposition to Indian press freedom, see REPORT FROM THE SELECT COMMITTEE ON INDIAN TERRITORIES 238 (1852). Edward Law, 1st Earl of Ellenborough, was the just-mentioned LCJ Ellenborough’s first-born son and served as the Governor-General of India from 1842 to 1844.

<sup>57</sup> DABHOIWALA, *supra* note 48, at 232.

<sup>58</sup> Act No. XI of 1835, in 1 WILLIAM THEOBALD, THE LEGISLATIVE ACTS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, 1834–1851 at 7–11 (1868).

<sup>59</sup> 1 CONSTITUTIONAL DOCUMENTS OF THE UNITED KINGDOM 1782–1835, at 41–56 (H. T. Dickinson ed., 2005); An Act for the More Effectual Suppression of Societies Established for Seditious and Treasonable Purposes; and for Better Preventing Treasonable and Seditious Practices, 1799, 39 Geo. 3, c. 79 (U.K.). The law was repealed “in stages” starting in 1869. *Id.* at 56 n.1. A modified form of the imprint requirement was on the books even after the Printer’s Imprint Act of 1961, 9 & 10 Eliz. 2 c. 31 (U.K.).

and whirlwind of the storm that overtook them this year, having first found time to pass the *new* law, the Government of India issued instructions (18th June, 1857) to magistrates to “take care that the provisions of Act XI. of 1835 are fully carried out!”<sup>60</sup>

Indeed, Connon suggests that in certain respects, Indian press regulations were looser than those in England:

[Y]our petitioner believes less precaution has been taken in India since 1835 till now, than is still taken in England, to ensure a certain amount of respectability on the part of newspaper proprietors so far as that can be done by law. He alludes to the seditious libel bond or recognizance required in England from newspaper proprietors and sureties under 60 Geo. III. c. 9, and 11 Geo. IV. c. 73.<sup>61</sup> Your petitioner would not object for himself, and does not believe that any respectable newspaper proprietor in India would object, to furnish such a bond as that required here under those Acts, though he submits, with great deference, that it is little that laws can do in such a matter, the sphere being one of social morals alone. For proved libel, the law already provides ample punishment, though improvement in our Libel Law to make it the same in all respects as that in England, would not only not be objected to, but would be warmly welcomed by your petitioner.<sup>62</sup>

Finally, Connon affirms the Indian government’s position that the Anglo-Indian press and the native press should rest on the same legal basis:

I coincide with the Government of India, that, as regards the liberty of the press at least, all classes of their subjects, European and native alike, should be put on a footing of equality. There are some who think that we have, and I believe more who now think that we ought to have, governed India by the dominance of race alone, placing it under that iron heel of despotism, which excites the indignation of us all when applied by dominant powers or races elsewhere. Such parties may argue for a liberty of the English press in India, while they would deny any freedom to the native press. But I am strongly against that view; and I am confident that the matured conviction and conscientiousness of the English people will be against it too, however flattering the other view may be to their pride at first sight. We cannot govern India permanently in defiance of the public opinion of the country, not even with double the great English army now there. More than that, I venture to say it is not worth having, nor have we any

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<sup>60</sup> JOHN CONNON, A LETTER TO R. D. MANGLES, ESQ., M.P., CHAIRMAN OF THE EAST INDIA COMPANY, IN DEFENCE OF THE LIBERTY OF THE PRESS IN INDIA 21 (1857) (emphasis in original).

<sup>61</sup> This portion of the Six Acts (1819) was repealed in the Newspapers, Printers, and Reading Rooms Repeal Act of 1869, 32 & 33 Vict. c. 24 (U.K.).

<sup>62</sup> CONNON, *supra* note 60, at 36.

business there, on such terms. No government, no despotism is or can be permanently above the power of opinion.<sup>63</sup>

At least before the Indian Rebellion, there is not a shred of evidence that John Stuart Mill—whom Connon himself cites favorably on a related topic<sup>64</sup>—disagreed.

Yet Dabhoiwala's treatment of Mill is, if anything, still less accurate than his general portrait of Indian press policy. His quotations and paraphrases of Mill go beyond cherry-picking to cutting and splicing textual evidence. When, for instance, Dabhoiwala highlights Mill's observation that there is no "public opinion" in India comparable to that of other colonial territories, he wrenches Mill's words from context, distorting his meaning. Here is Dabhoiwala's framing of the matter:

Because of [India's] native backwardness, there was in Mill's view also no such thing as public opinion in India: the public of India afford no assistance in their own government. "They are not ripe for doing so by means of representative government; they are not even in a condition to make effectual appeals to the people of this country; they cannot even make their circumstances and interests and grievances known . . . therefore, the great security for good government—public discussion—does not exist for India, as it exists for this country and its other dependencies." Perversely, this meant for Mill that the opinions of intelligent and articulate Indians who did make themselves heard were to be dismissed as intrinsically suspect, self-interested and "malcontent." And that included the whole of the Indian periodical press. Though in Britain newspapers were a critical means of public debate, he argued, that was not true of the native Indian press—which was "an organ exclusively of individual interests," the mouthpiece of "rich individuals and societies representing class interests," not of "the people of India." The Indian people had no voice; they constituted no public; they had no means of making their views known. To Mill, Indians who did speak out were irrelevant exceptions that only proved this immutable rule.<sup>65</sup>

He has done scant justice to Mill here. Consider the larger context. During the same parliamentary hearings on the renewal of the EIC charter (1852) from which Dabhoiwala derives the above quotation, Mill is asked about public opinion in India:

3028. Do you think it would be possible to recognise any body in India which should be competent to express an opinion upon measures relating to that country?

[Mill:] I do not think that India has yet attained such a degree of civilization and improvement as to be ripe for anything like a representative system. It would certainly

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<sup>63</sup> *Id.* at 8–9.

<sup>64</sup> *Id.* at 11–12.

<sup>65</sup> DABHOIWALA, *supra* note 48, at 213–14.

be possible for the Government to take natives into its counsels much more than at present; but this I think would be better done by *cultivating a greater degree of intercourse between intelligent natives and the members of the Government, or the holders of public offices . . .*<sup>66</sup>

Yes, as in the passage that Dabhoiwala cites, Mill holds that India is not yet ready for representative government, but look at what Dabhoiwala omits: Mill, far from excluding “intelligent natives” from public discussion, explicitly recommends cultivating them for the purpose. At one point, Dabhoiwala feels compelled to admit that Mill “reported to the British parliament in 1852, there were certainly ‘intelligent natives’ to be found in India,” homing in on just two words in Mill’s answer.<sup>67</sup> Yet he neatly pares away the surrounding text and thus the larger implications of Mill’s remarks, obfuscating Mill’s meaning by highly selective quotation.

Additionally, Mill commended the practice of leaving time between the proposal of laws in India and their enactment, which allowed native Indians to comment on the proposed legislation:

3029. It has been stated by some witnesses, that great advantage has resulted in India from the preliminary promulgation of proposed laws, which has had the effect of eliciting opinions from the natives, so as to enable the Government to form an opinion whether the law might be advantageously carried into effect or not, do you think that is a useful practice?

[Mill:] I have no doubt that it has been a very useful and indeed a necessary practice.<sup>68</sup>

Dabhoiwala either overlooks this exchange or does not see fit to mention it.

In the business about “individual interests,” “class interests,” and “the people of India,” Dabhoiwala has offered a patchwork rather than a full picture. He conflates material from various sources with varying dates in a single sentence—itsself a dubious practice, as India in 1852 presented a different prospect from India in 1858—and in his excerpts he again omits the material part. In 1858, by which point Parliament had decided on direct rule of India but was still debating the details of its administration, Mill penned a *Report to the General Court of Proprietors, Drawing Attention to the Two Bills Now Before Parliament Relating to the Government of India*.<sup>69</sup> Mill was not writing on his own behalf but representing the EIC’s Court of

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<sup>66</sup> REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF LORDS, *supra* note 34, at 314–15.

<sup>67</sup> DABHOIWALA, *supra* note 48, at 213.

<sup>68</sup> REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF LORDS, *supra* note 34, at 315.

<sup>69</sup> 30 COLLECTED WORKS, *supra* note 5, at 163.

Directors, and in this capacity he advised the EIC's Court of Proprietors that Parliament's ignorance of India would prove a stumbling block to direct governance. If Parliament were to intervene in India, he maintains, they would either play domestic politics or lend an ear to individual, self-interested natives who happened to be well-positioned and well-off:

In the exceptional cases in which [Parliament] do interfere, the interference will not be grounded on knowledge of the subject, and will probably be for the most part confined to cases where an Indian question is taken up from party motives, as the means of injuring a Minister; or when some Indian malcontent, generally with objects opposed to good government, succeeds in interesting the sympathies of the public in his favour. For it is not the people of India, but rich individuals and societies representing class interests, who have the means of engaging the ear of the public through the press, and through agents in Parliament.<sup>70</sup>

Mill may be wrong here, and the point forms part of his (self-interested) reiteration of the argument that the EIC model is superior to direct rule. But it is, of course, possible he is right that individual and class interests underwrote that portion of the Indian press most likely to appeal to the British public (and it is the British public, not the Indian, that appears to be his focus here, as Mill has just observed that the newly proposed Minister of India would be "subject to the control of Parliament and of the British nation," and it is the British public, not the Indian, who would be more easily reached "through agents in Parliament").<sup>71</sup> The question of whether the native press represented broader Indian interests is an empirical one, after all, and Dabhoiwala seems incurious about the answer. Even in advanced democracies, "the press" is often beholden to individual and corporate interests and does not necessarily represent the public at large, a problem that Dabhoiwala acknowledges later in his book. As A. J. Liebling famously remarked, "Freedom of the press is guaranteed only to those who own one."<sup>72</sup> The dangers of unequal wealth, placement, and power would not have been absent from a caste system.

Another swatch of text that Dabhoiwala weaves into his indictment against Mill comes from Mill's 1852 interview in the House of Lords, which took place six years before Mill composed his *Report* to the Court of Proprietors, but as with his man-

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<sup>70</sup> *Id.* at 165.

<sup>71</sup> *Id.*

<sup>72</sup> A. J. LIEBLING, *THE PRESS* 30 (1964).

agement of the 1858 Report, Dabhoiwala tangles the evidence in the process of conflation. In Dabhoiwala's rendering, Mill asserts that "the native Indian press" is "an organ exclusively of individual interests," and there is an end on it.<sup>73</sup> Here, however, is the full passage, including the question that prompted Mill's remarks, previously quoted in my discussion of Barker:

3155. You said that not only were the dangers that were expected to accrue from the establishment of a free press in India exaggerated, but also that the expected advantages were exaggerated. Is that your opinion?

[Mill:] It is. As long as the great mass of the people of India have very little access to the press, it is in danger of being an organ exclusively of individual interests. The English newspaper press in India is the organ only of the English society, and chiefly of the part of it unconnected with the Government. It has little to do with the natives, or with the great interests of India.<sup>74</sup>

Again, Mill may or may not be right here—though it is plainly true that only a tiny minority of Indians had access to the press—but his sympathies lie with the Indian majority as opposed to English stakeholders and elite special interests, and he implies that greater Indian access to the press would be a salutary development, as newspapers would more faithfully reflect the needs of the Indian public.

The important colloquy on press freedom that precedes this one furnishes Dabhoiwala with another opportunity to cast Mill as an imperial censor through the use of scholarly legerdemain: "On 20 May 1823," Dabhoiwala relates, "in the midst of [an] unfolding crisis" concerning the Indian press, "a young man called John Stuart Mill entered the service of the East India Company at its London headquarters. It was his seventeenth birthday. As part of his duties in learning to draft official dispatches, he read the various internal memoranda being circulating about press freedom in India. They left a lasting impression on his teenage mind: Almost thirty years later, he could still instantly recall their central anxiety, 'that if full licence were allowed to the press, it would drive us out of India altogether.'"<sup>75</sup> Dabhoiwala insinuates that such early reading must have shaped Mill's alleged antipathy toward Indian press freedom. But compare Mill's full remarks in context—from the 1852 Lords' interview, already quoted—which in fact recall the contest surrounding Metcalfe's 1835 liberation of the Indian press, not the 1823 debate:

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<sup>73</sup> DABHOIWALA, *supra* note 48, at 214.

<sup>74</sup> REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF LORDS, *supra* note 34, at 329.

<sup>75</sup> DABHOIWALA, *supra* note 48, at 209–10.

3151. Do you see any difficulties likely to accrue from the unlicensed liberty of the press?

[Mill:] I think both the dangers and the advantages of the free press in India have been very much overrated: that the dangers were overrated is proved by the fact; it was anticipated by many people, that if full license were allowed to the press, it would drive us out of India altogether.<sup>76</sup>

Not only does Mill seem intent to assuage any anxiety about press freedom in India, he goes on, as we have just seen, to suggest the desirability of a native press with greater reach and influence. But Dabhoiwala adroitly dances around such material, as it might prove inconvenient for his thesis. He even engages in baseless speculation about James Mill, perhaps to complete the circle on the Mills and free speech: “It is possible,” he says, “that, in 1823, James Mill himself drafted the company’s policy statements on the dangers of allowing press liberty in India,”<sup>77</sup> the very documents that supposedly decided the younger Mill against free speech for Indians. Given that James Mill favored free speech in India—though one would never know it reading Dabhoiwala’s account—the chances that he drafted such policy statements are extremely remote; in any case, they did not reflect his own views.<sup>78</sup>

If Dabhoiwala warps J. S. Mill’s texts through spotty quotation, he tortures Mill’s early interpreters: “His British readers in India,” Dabhoiwala claims, “were quick to celebrate Mill’s argument as justifying all the *limits* on liberty ‘with which an intelligent but foreign despotism ought to content itself in ruling Asiatics.’”<sup>79</sup> Dabhoiwala here refers to *The Calcutta Review*’s 1860 discussion of Mill’s *On Liberty*. The *Review* does indeed address limits to Indian liberty:

At first sight it may appear to be a dangerous task to speak of liberty in regard to a country which we have to rule by pure despotism. It is true that the necessities, if not the opinions, of the Whig Statesmen, who have had most to do with Indian affairs since Lord W. Benlinck, have forced them to liberalize institutions from time to time, and to conduct their *despotism, as it has been said, upon revolutionary principles*. But this sort of thing came to a speedy termination in 1857, to the events of which period

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<sup>76</sup> REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF LORDS, *supra* note 34, at 329.

<sup>77</sup> DABHOIWALA, *supra* note 48, at 211.

<sup>78</sup> James Silk Buckingham twice invoked James Mill in 1823–24 to bolster his argument for Indian press freedom; see *Liberty of the Press in India*, SUN (London), Sept. 6, 1823, at 2a; *Examination of the Arguments Against a Free Press in India*, 1 THE ORIENTAL HERALD AND COLONIAL REVIEW (James Silk Buckingham ed., 1824), at 204.

<sup>79</sup> DABHOIWALA, *supra* note 48, at 225.

it had not a little contributed; and no one can say that the laws of that or the following year erred on the side of a too squeamish liberality. The object, then, of these pages must be separated clearly from any wish to return to that state of things which existed before the flood, in those antediluvian days, when monsters possessed the earth in the form of brave and loyal sepoy, intelligent native gentlemen, and radical-reforming despots. It is not the extent to which liberty can be pushed, but rather the limits within which it ought, for the present, to be restricted, that we must consider in reference to Liberty in British India.<sup>80</sup>

However, contrary to what Dabhoiwala implies, the reviewer casts Millian theory as too liberal for India after the flood:

[T]o take a familiar instance, a member of the Anglo-Indian community would have undergone much small persecution in this country had he written, or openly talked in defence of the sepoy during the late outbreak; yet Mr. Mill shows that he ought to have been allowed full liberty for the two-fold reason that, if right, (and even such a line of argument might have contained a portion of truth,) the public who stifle it lose the opportunity of correcting their own views; while, if it were wrong, (or as far as it was wrong,) they lose the clearer and livelier perception of truth produced by its collision with error.<sup>81</sup>

After noting that Mill provided exceptions to his free speech doctrine only in cases where speech leads to overt criminal acts, the reviewer, “to put the case home to our readers,” inquires:

[C]ould a native of India have claimed immunity if, in 1857, he had gone about the streets of Calcutta with a green flag, stirring up the people to rise and massacre the inhabitants of Chowringhee? Apparently Mr. Mill thinks he might if no overt act had followed; but surely this would be to measure his crime by a *post eventum* standard not admissible in matters of police.<sup>82</sup>

We can bracket, for the moment, the question of whether the reviewer has interpreted Mill correctly here. Dabhoiwala has clearly misread both Mill and *The Calcutta Review*. By suggesting that Mill supplied *The Calcutta Review* with a pretext for press restrictions in India, Dabhoiwala has once again muddled the evidence.

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<sup>80</sup> 34 CALCUTTA REV. 94 (1860) (emphasis added).

<sup>81</sup> *Id.* at 96.

<sup>82</sup> *Id.*



### III. MILL'S COMPLEX LEGACY

Among the most curious aspects of this performance is that, technically, no one can accuse Dabhoiwala of a lack of balance respecting Mill's character. At the onset of his discussion, he dutifully lays out Mill's progressive bona fides: his ardent support for women's rights, his repudiation of racial "science," his vehement denunciations of slavery. But on the topic of Mill and India, Dabhoiwala turns from historian to prosecutor.<sup>83</sup> His earlier effort to fill both sides of the Mill ledger reveals itself as a kind of faux balance buried in a larger indictment. Sifting the nuances in Mill's thoughts on India would disrupt the process of turning Mill into a cartoon villain.

Another, equally puzzling aspect of Dabhoiwala's treatment of Mill is that damning evidence about Mill's imperialist attitudes is not hard to find. Dabhoiwala himself catches some real fish in his net along with the detritus,<sup>84</sup> but if anything, Dabhoiwala is too easy on Mill for his stated views on China. He notes Mill's fear, expressed in *On Liberty*, that Europe will go the way of China, where uniformity of opinion was the "ideal," and he spotlights Mill's chauvinistic remark that if China were "ever to be farther improved, it must be by foreigners."<sup>85</sup> Dabhoiwala calls the

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<sup>83</sup> In his penetrating review of Dabhoiwala's book for *NYRB*, Kwame Anthony Appiah independently uses the same figure of prosecution: "Dabhoiwala, approaching Mill like a prosecutor preparing a brief, can sometimes mistake complexity for contradiction." Kwame Anthony Appiah, *Watch What You Say*, N.Y. REV. BOOKS, Sept. 25, 2025, <https://perma.cc/ER3Z-B2GH>.

<sup>84</sup> Exhibit A is Mill's uncharacteristically bitter pamphlet of 1858, *The Moral of the India Debate*. See 30 COLLECTED WORKS, *supra* note 5, at 195–98. While defending Charles Canning, the Governor-General of India, as well as the EIC model of rule more generally, Mill is at his most disdainful on the state of Indian "civilization." Given the turbulent conditions following the Indian Rebellion, "a time of emergency," *id.* at 196, he even objects to the public airing of differences between the British government and the EIC, suggesting that such open conflict would further roil the waters. Perhaps, as in the "corn dealer" example, Mill is suggesting that the circumstances justify a measure of censorship (or self-censorship). It remains unclear the extent to which Mill identifies with the persona he adopts in this brief polemic, as the pamphlet was published anonymously and was "[n]ot republished." *Id.* at 194. Martin Moir has examined the complexities of corporate authorship in Mill's dispatches; arguably, similar caveats apply to Mill's EIC memoranda. See Martin Moir, *John Stuart Mill's Draft Despatches to India and the Problem of Bureaucratic Authorship*, in J.S. MILL'S ENCOUNTER WITH INDIA 72 (Martin I. Moir, Douglas M. Peers & Lynn Zastoupil eds., 1999). Still, the language Mill deploys in this pamphlet is discreditable at best.

<sup>85</sup> MILL, *supra* note 41, at 136, in DABHOIWALA, *supra* note 48, at 223.

remark “fleeting but extremely telling.”<sup>86</sup> The comment is not so “fleeting” as one might like. Earlier in *On Liberty*, Mill had lamented the “the prohibition of the importation of opium into China” as an “infringement[] on the liberty of the . . . buyer.”<sup>87</sup> Whatever Mill’s personal view of the Opium Wars, his rhetoric here is not calibrated to pacify Sino-British relations.<sup>88</sup> What is more, in a *Memorandum* congratulating the EIC for its improvements to India, Mill justifies the Indian export of opium to China on economic grounds: The opium trade generated massive revenues without the need for taxes.<sup>89</sup> An uncharitable but not entirely unfair assessment would be that Mill continued to play the role of EIC lapdog even after the company was dissolved.

Regarding Indian self-government, Mill recommended gradualism:

3116. If the natives of India were to occupy a very large portion of the higher civil and military appointments of the country, do you suppose that we should continue to maintain the dependence of India upon this country?

[Mill:] If the natives were allowed to wield the military force of India, I think it would be impossible to maintain British ascendancy there; but I think it would be perfectly possible to open to them a very large share of the civil government without its having any such effect.

3117. Without having any European supervision?

[Mill:] I do not think you could make a native Governor-general, but I think natives might in time be appointed to many of the higher administrative offices.

3118. Do you think they might be members of Council?

[Mill:] Not, I should think, at present; but in proportion as the natives become trustworthy and qualified for high office, it seems to me not only allowable, but a duty to appoint them to it.

3119. Do you think that in those circumstances the dependence of India upon this country could be maintained?

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<sup>86</sup> *Id.*

<sup>87</sup> MILL, *supra* note 41, at 157–58.

<sup>88</sup> If there is a modicum of sincerity in Mill’s claim about the liberty of the buyer, it is rooted, perhaps, in Harriet Taylor’s use of laudanum to treat various illnesses. CAPALDI, *supra* note 18, at 191.

<sup>89</sup> JOHN STUART MILL, MEMORANDUM OF THE IMPROVEMENTS IN THE ADMINISTRATION OF INDIA DURING THE LAST THIRTY YEARS 21–22 (1858). Of this Memorandum, Mill notes that he was “partly the author and partly the Editor.” 30 COLLECTED WORKS, *supra* note 5, at 90.

[Mill:] I think it might, by judicious management, be made to continue till the time arises when the natives shall be qualified to carry on the same system of Government without our assistance.<sup>90</sup>

Dabhoiwala quotes this passage selectively, imparting a worse spin than is warranted,<sup>91</sup> but Mill's testimony exemplifies Dipesh Chakrabarty's comment that Mill "placed Indians in the 'waiting room of history'"; his philosophy "epitomized the injunction, 'not yet.'"<sup>92</sup>

One might ask, then, why all this fuss if, after all, Mill espoused a paternalist, imperialist liberalism? Isn't Dabhoiwala right-ish? First, one would hope that "-ish" does not become a new scholarly standard. Second, when historians become prosecutors, they shed their curiosity about vital questions. One such question is how "brilliant" thinkers like Mill (an adjective that Dabhoiwala sprinkles liberally on his targets, including Mill) could justify not just colonialism but despotism. Another important question is how some nineteenth-century liberals could regard colonial despotism as compatible with free speech, a hybrid system of governance that *The Calcutta Review* calls "despotism . . . upon revolutionary principles."<sup>93</sup> We cannot unriddle these issues by drawing caricatures of flawed, brilliant people.

Arraigning complex historical figures also clouds our window onto the past. Historians bent on impeaching their subjects might, for example, ignore inconvenient truths that these figures were not too timorous to confront. Liberals like Mill adopted their colonial attitudes in the face of some troubling cultural practices in India, none of which Dabhoiwala deems worthy of notice. As Mark Tunick observes, "Mill is critical of a number of Indian practices, such as infanticide, thuggee, sati [widow-burning], the 'fraudulent practice' of witchcraft, and the 'barbarous practice' of tragga."<sup>94</sup> One need not be an apologist for empire, as Mill was, to discern the flaws of many pre-colonial cultures. In the face of such customs, how many

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<sup>90</sup> REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF LORDS, *supra* note 34, at 325.

<sup>91</sup> See DABHOIWALA, *supra* note 48, at 213.

<sup>92</sup> See LISA LOWE, *THE INTIMACIES OF FOUR CONTINENTS* 49 (2015).

<sup>93</sup> Book Review, 34 *CALCUTTA REV.* 94, 94 (1860). Most of us hold sacred the principle "first voice, then vote," but for a neo-Millian political analysis that stresses the importance of building liberal institutions before establishing democracy, see FAREED ZAKARIA, *THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD* (2003).

<sup>94</sup> Mark Tunick, *Tolerant Imperialism: John Stuart Mill's Defense of British Rule in India*, 68 *REV. POL.* 1, 16 (2006). On "tragga," see 30 *COLLECTED WORKS*, *supra* note 5, at 123–24. It is only

of us would have had the clarity of vision to descry the right path for a foreign power? None of these considerations justifies “benevolent despotism,” which invariably devolves into a self-serving regime. Yet the proper course of action when facing other countries’ human rights abuses is, in many cases, still anything but clear.<sup>95</sup>

Mill leaves a complicated legacy. Given his celebration of diverse viewpoints, Mill could scarcely object to the widely varying estimates of his own work. But while Mill scholarship abounds with rich and textured analysis, in recent years, it has too often succumbed to a “boo-hooray” moralism: Mill is cast as either a hero or a supervillain. Nuance is commonly sacrificed on the twin altars of politics and presentism. Although Mill still has much to teach us, it would be unwise to treat him as a guru. And though it is tempting to poke Mill in the eye for being less enlightened than we are, much is lost when we study history in a prosecutorial mode.

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fair to note Mara Hvistendahl’s argument that the EIC’s imposition of higher taxes and interference with Indian social structure exacerbated the problem of female infanticide. MARA HVISTENDAHL, UNNATURAL SELECTION: CHOOSING BOYS OVER GIRLS, AND THE CONSEQUENCES OF A WORLD FULL OF MEN 67–71 (2012). Looking at similar evidence, L. S. Vishwanath is more cautious, maintaining that “because we do not have a detailed census on sex ratios for pre-colonial times,” comparisons of infanticide rates before and after the rise of British rule are not possible. L. S. Vishwanath, *Female Infanticide, Property, and the Colonial State*, in SEX-SELECTIVE ABORTION IN INDIA: GENDER, SOCIETY AND NEW REPRODUCTIVE TECHNOLOGIES 269, 269 (Tulsi Patel ed., 2007). On sati and female infanticide, see also CASSELS, *supra* note 55, at 86–164.

<sup>95</sup> Even limited military intervention is fraught with risk (see *Libya*); economic sanctions against authoritarian regimes seldom work (diplomatic and economic pressure has not deterred Putin from human rights abuses both at home and abroad); and the strategy of economic inclusion frequently fails of its aim (inducting China into the global economy, for example, has not curbed its human rights violations, as political and economic reform are not, as some argued, indissolubly linked). For more on sanctions, see AGATHE DEMARAIS, BACKFIRE: HOW SANCTIONS RESHAPE THE WORLD AGAINST U.S. INTERESTS (2022).