

## What's Not in *On Liberty*: The Pacific Theory of Freedom of Discussion in the Early Nineteenth Century

Gregory Conti

**Abstract** It is often assumed that John Stuart Mill's *On Liberty* (1859) is representative of the major lines of thought on the freedoms of discussion and the press in the period. In fact, however, Mill's treatise was selective about the kinds of reasons it admitted in support of these liberties. This essay depicts one set of arguments that Mill omitted and that has subsequently been overlooked in the history of political thought. An important element of liberal thought in early nineteenth-century Britain was that the liberty of the press made indispensable contributions to domestic peace and stability. These pacific arguments were elaborated in a wide variety of forms by a number of authors. More specifically, the view that unrestricted liberty of discussion was necessary for peace and political stability drew on an older tradition of thinking about religious toleration as well as newer ideas about the functioning of economic markets and the place of public opinion in the politics of modern societies. In the hands of its proponents, the view assumed psychological, historical, sociological, or metaphysical dimensions. Even though prominent thinkers, including his own father, were associated with this pacific outlook on the liberty of the press, John Stuart Mill rejected it both as an empirically dubious proposition and as an insufficient moral basis on which to build an enduring commitment to open public discussion.

In 1896, the Anglo-Irish historian and philosopher W. E. H. Lecky reflected on the foundations of the commitment to a free press and free expression that had developed in Britain over the course of the last century. “For several generations” it had been a “deep-seated conviction of English political life” that opinions “are never so dangerous ... as when their free expression is suppressed;” a consensus had formed that peace and order were best served by allowing even “dangerous and subversive” opinions to enter the public sphere. Although Lecky had reservations about this line of thought, he admitted that its “great truth” had anchored the “political philosophy” of the century’s “more sagacious politicians.”<sup>1</sup> The national confidence in a connection between, on the one hand, the liberty of discussion and the press and, on the other, civil peace and stability had been a driving force behind the creation of a modern Britain that was tolerant and intellectually free.

**Greg Conti** is a PhD candidate in government at Harvard University. He would like to thank Eric Nelson, Will Selinger, Richard Tuck, and Cheryl Welch, as well as the editors and reviewers of *Journal of British Studies*.

<sup>1</sup> W. E. H. Lecky, *Democracy and Liberty*, 2 vols. (London, 1896), 2:402.

Lecky's verdict, however, would come as a surprise to many political theorists and intellectual historians today. While other defenses of intellectual and expressive freedom that were prominent in the century—such as that it promotes the discovery of truth or fosters certain virtues and qualities of character—have received much scholarly attention, there has been little recognition of the importance of the strand of liberal thought that sought to vindicate freedom of discussion as a pacific or stabilizing ingredient in modern politics.

This article attempts to fill this historiographical gap by reconstructing what I will call the pacific theory of free discussion during the early decades of the nineteenth century, the most formative period for the liberalization of the press in British history.<sup>2</sup> It analyzes important instances of the pervasive, but forgotten, school of liberal argument that stressed the idea that the liberties of discussion and the press promoted domestic peace and stability. Through an interpretation of the neglected work of the utilitarian philosopher Samuel Bailey, little-studied early articles on the press by James Mill, and texts from contemporaneous Whig writers, this essay gives recognition to this essential strand of liberal thought.

In addition to being a valuable object for the history of political thought, the recovery of the pacific theory of free discussion modifies our understanding of nineteenth-century liberalism in important ways. As this essay will show, attention to the pacific theory allows us to refine our grasp of such integral elements of liberalism as the notions of the rise of public opinion and the marketplace of ideas. It gives precision to two claims about the theory of free expression, which, though frequently made, are not often substantiated in detail—namely, that it evolved out of older views about religious toleration, and that it was influenced by the prestigious science of political economy.<sup>3</sup> Moreover, it challenges the frequent assumption of discontinuity between the political thought of the Enlightenment and that of the nineteenth century, and it shines a new light on the relationship between the theoretical foundations of the two dominant wings of liberalism in the early nineteenth century, whiggism and philosophic radicalism. Because it was developed by sophisticated authors attuned to the major intellectual currents of their culture, the pacific theory of intellectual-expressive liberty offers a window onto the character of nineteenth-century liberalism more generally.

The neglect of this element of nineteenth-century intellectual history owes much to the reputation of John Stuart Mill, which looms so large over contemporary scholarship that it is tempting to assume that his work was representative of the British theory of freedom of discussion as a whole.<sup>4</sup> Unlike his father, the younger Mill did not espouse a pacific justification for the liberty of discussion; consequently,

<sup>2</sup> William Wickwar's *Struggle for the Freedom of the Press, 1819–1832* (London, 1928) and Arthur Aspinall's *Politics and the Press, 1780–1850* (London, 1949) are dated but still helpful accounts of the movement for a free press at this time. See also Kevin Gilmartin, *Print Politics: The Press and Radical Opposition in Early Nineteenth-Century England* (Cambridge, 1996); Donald Thomas, *A Long Time Burning: A History of Literary Censorship in England* (New York, 1969); Joel H. Wiener, *Radicalism and Free Thought in Nineteenth-Century Britain: The Life of Richard Carlile* (Westport, 1983).

<sup>3</sup> See Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge, 1982), 16, 106.

<sup>4</sup> On the assumption that Mill is representative of the whole of Victorian liberalism (or of liberalism *simpliciter*), see John C. Rees, *John Stuart Mill's On Liberty* (Oxford, 1985), 78–79; C. L. Ten, "Mill's Place in Liberalism," *Political Science Reviewer* 24, no. 1 (Fall 1995): 179–204, at 179–80; H. S. Jones, *Victorian Political Thought* (New York, 2000), 35, 95. On the process of Mill's canonization as a political thinker,

modern intellectual historians have ignored this crucial piece of the British liberal tradition. By asking why this way of thinking about free expression did not appeal to John Stuart Mill, we gain clarity on a fundamental but little-noted division between two contending views of the meaning and value of the intellectual-expressive liberties: one that identified the compatibility of these liberties with the prospects for civil peace and stability as central to the liberal cause; and one that spurned such narrowly “instrumental” concerns in favor of grounding the intellectual-expressive liberties solely on “the permanent interests of man as a progressive being.”<sup>5</sup>

The first two sections of this essay reconstruct some of the most significant members of the family of pacific arguments in the 1810s to 1840s and examines their relationship to other facets of British liberalism. A shorter third section then turns to John Stuart Mill in order to explore the reasons behind his avoidance of these arguments. I conclude with reflections on the way in which the analysis of the pacific theory of free expression alters our understanding of nineteenth-century liberalism more broadly.

## I. SAMUEL BAILEY

In 1821, the philosopher, economist, and future philosophic-radical politician Samuel Bailey published his first book, *Essays on the Formation and Publication of Opinions*.<sup>6</sup> *Formation and Publication*, which advocated complete liberty of opinion and the press, was then hailed as a seminal work,<sup>7</sup> yet traces of the book and its author have vanished from the history of political thought.<sup>8</sup> This absence has been of scholarly detriment above all in the study of John Stuart Mill.<sup>9</sup> For Mill knew Bailey’s corpus from top to bottom,<sup>10</sup> and it is likely that he was especially closely

---

see Stefan Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850–1930* (Oxford, 1993), chap. 8.

<sup>5</sup> John Stuart Mill, *On Liberty*, in *The Collected Works of John Stuart Mill*, ed. A. Robson and John M. Robson, 33 vols. (Toronto, 1963–1991), 18:213–310, at 224. All references to John Stuart Mill’s work will be to the Robsons’ thirty-three volume edition (hereafter *CW*), published between 1963 and 1991.

<sup>6</sup> Samuel Bailey, *Essays on the formation and publication of opinions: and on other Subjects*, 3rd ed. (London, 1837). Though I will make use of this edition throughout because it is the final one, I have verified that the passages cited in this paper were present from the first edition of 1821.

<sup>7</sup> See Thomas Perronet Thompson, “Essays on the Pursuit of Truth, &c.,” *Westminster Review* 11, no. 22 (October 1829): 477–89, at 477–78. For later testimonials of the *Formation and Publication*’s influence, see Leslie Stephen, *The English Utilitarians: Volume II, James Mill* (London, 1900), 339; Alexander Bain, *John Stuart Mill: A Criticism with Personal Recollections* (London, 1882), 47.

<sup>8</sup> The extent to which Bailey has been forgotten is attested by his exclusion from works such as Gareth Stedman-Jones and Gregory Claeys, eds., *The Cambridge History of Nineteenth-Century Political Thought*, (Cambridge, 2011) and James Crimmins, ed., *Bloomsbury Encyclopedia of Utilitarianism* (New York, 2013).

<sup>9</sup> Both K. C. O’Rourke and John C. Rees have offered reconstructions of the background to and development of Mill’s views on the liberty of discussion in which Bailey plays no part; see K. C. O’Rourke, *Mill and Expression: The Genesis of a Theory* (London, 2001); John C. Rees, *John Stuart Mill’s On Liberty* (Oxford, 1985).

<sup>10</sup> He discussed Bailey’s economics as part of his youthful reading group, wrote a review of Bailey’s *Rationale of Political Representation*, entered into a dispute with Bailey about (of all things) the theory of vision, listed him as an ally in the fight for women’s suffrage, and engaged with him on foundational epistemological matters in the *Logic*.

acquainted with the *Formation and Publication*. Mill's father had written approvingly about the book when its second edition was released in 1826,<sup>11</sup> and after James Mill's death his son republished this review essay, accompanied by excerpts from Bailey's original text, as a volume titled *The Principles of Toleration*.<sup>12</sup> Forgotten though he is today, Bailey was a notable figure in the intellectual world of the Mills.

These facts are important because Bailey's *Formation and Publication* was the closest approximation to *On Liberty*'s chapter on "The Liberty of Thought and Discussion" before *On Liberty* itself, with Bailey already articulating nearly the full range of arguments to which Mill would appeal in proving the need for free expression. What matters for this essay, however, are not the commonalities between *On Liberty* and *Formation and Publication*, but rather a discrepancy between them. For in addition to the lines of thought that would make their way into *On Liberty*, Bailey offered an argument that would have no counterpart in Mill's treatise, namely, that the liberty of discussion was necessary for the achievement of civic peace and social stability.

Bailey's pacific or stabilizing argument for unrestricted discussion began with two proofs of the "ultimate inefficacy of restraints on the publication of opinions." The first was what we might call theodical in character. Though not quite "whatever is, is right," Bailey was nonetheless putting forth something reminiscent of this notorious Leibnizian claim: he argued that the distribution of opinions in a society was what it ought to be, and, moreover, was unalterable by the coercive intervention of the state. The views current in a society reflected an underlying matrix of social and intellectual conditions against which the weapons of authority were futile. "The interference of power cannot obviate this necessity [for the 'regular process' of the contestation of views to take place], nor can it prevent the operation of those general causes, which are constantly at work on the understandings of men, and produce certain opinions in certain states of society and stages of civilization." The laws that governed the "natural progress" of opinions were deeper and stronger than government's efforts to stall or direct this progress could ever be.<sup>13</sup>

Bailey's second proof of ineffectuality contained less historical metaphysics and more psychology. It consisted of the longstanding observation—one that even such hardened proponents of coercive measures of intolerance as John Locke's antagonist Jonas Proast had felt compelled to concede<sup>14</sup>—that efforts to silence an opinion frequently backfired and caused the targeted opinion to be regarded more favorably than it had been before. Repressive measures spread "the obnoxious doctrine far more rapidly than it would have diffused itself had it been left unmolested."<sup>15</sup>

But this was not the worst of it. What made persecution and censorship ineffectual—namely, that they disrupted the "natural progress" of opinions—also caused them to produce the "positive evils" of violence and domestic unrest.<sup>16</sup> Thus only countries

<sup>11</sup> James Mill, "Formation of Opinions," *Westminster Review* 6, no. 11 (July 1826): 1–22.

<sup>12</sup> James Mill, *The Principles of Toleration* (London, 1837). The editorship of the *Principles* was anonymous, but Keith Quincy has made a persuasive case that John Stuart Mill was the editor; Keith Quincy, "Samuel Bailey and Mill's Defence of Freedom of Discussion," *Mill Newsletter* 21, no. 1 (Winter 1986): 4–18, at 7–9.

<sup>13</sup> Bailey, *Formation and Publication*, 149–51.

<sup>14</sup> Jonas Proast, *The argument of the Letter concerning toleration, briefly consider'd and answer'd* (London, 1690), 14.

<sup>15</sup> Bailey, *Formation and Publication*, 151–52.

<sup>16</sup> *Ibid.*, 152.

that permitted the free circulation of opinions were, Bailey judged, likely to prove stable and orderly. This stability derived from an important aspect of the “regular process” by which systems of belief succeeded one another—that it was slow and gradual. “In a country, or community, where no such restraints existed, it is obvious that no changes of opinion could well be sudden. Truth, at the best, makes but slow advances.”<sup>17</sup> With this judgment Bailey’s rationalism diverged decisively from the utopian rationalism of William Godwin, who had predicted that, if only his compatriots would overcome the “cowardice” that inhibited them from speaking their minds sincerely, then “three years hence there would be scarcely a falsehood of any magnitude remaining in the civilized world.”<sup>18</sup> *Pace* Godwin, Bailey believed that when the human mind encountered new ideas a kind of friction or inertia delayed the embrace of novel beliefs. This process ensured that the succession of opinions would be characterized by continuity rather than by the precipitous, “violent” overthrow of established modes of thought. What threatened civic peace was not changes of opinion *tout court*, but too abrupt and rapid changes. And the operation of free discussion was certain of itself to keep the advance of intellect “so insensibly progressive, that we can hardly mark the change but by comparing two distant periods.”<sup>19</sup>

If the continuity and gradualness of the evolution of beliefs protected free societies against violent upheaval, this mechanism was not, as the reader might imagine, dependent upon the power of majorities to suppress dissent. Bailey anticipated many themes that we have come to associate with the younger Mill, including the alarm at such extralegal forms of constraint on opinion as the *social* tyranny of the majority.<sup>20</sup> For Bailey, the gradualism that marked the distribution of beliefs over time was due to the piece-by-piece manner in which new truths were ascertained and promulgated, and to people’s reluctance to abandon their traditional views.<sup>21</sup> Indeed, Bailey judged that the social intolerance against which John Stuart Mill would later inveigh was productive of discord and violence in the same way that legal, state-sponsored persecution and censorship were. Similarly, James Mill did not endorse majority tyranny, whether in social or political form,<sup>22</sup> and neither did the Whigs.

Bailey argued that the most probable outcome of incursions on free discussion was precisely the opposite of their intended end. Under English law, all prosecutions for libel were officially undertaken in order to punish “breaches of the peace.”<sup>23</sup> Thus, though a restrictive press regime was conceived and justified as a guarantor of

<sup>17</sup> *Ibid.*

<sup>18</sup> William Godwin, *An enquiry concerning political justice, and its influence on general virtue and happiness*, 2 vols. (London, 1793), 1:241–42. Even Godwin could not sustain quite this pitch of optimism—the three-year horizon for sincerity’s vanquishing of error did not make it into the second or third editions of *Political Justice*.

<sup>19</sup> Bailey, *Formation and Publication*, 152–53.

<sup>20</sup> *Ibid.*, 87.

<sup>21</sup> *Ibid.*, 152–53.

<sup>22</sup> See Ursula Henriques, *Religious Toleration in England, 1787–1833* (Toronto, 1961), 254.

<sup>23</sup> Wickwar, *Struggle for the Freedom of the Press*, 18–27. Prosecutions for libel were the primary way, in addition to the imposition of taxes on certain kinds of periodicals, of constraining expression. There had been no prior censorship in England since the Licensing Act expired in 1695.

order,<sup>24</sup> it was in reality a chief source of destabilization: “When novel doctrines are kept down by force, they naturally resort to force to free themselves from restraints.”<sup>25</sup> The suppression of speech further compromised societal tranquility because “proscription and persecution” eroded citizens’ moral fiber:

What partly contributes to this violence [with which holders of targeted beliefs “burst forth” against their oppressors] is the effect produced by restraint on the moral qualities of men’s minds. Compulsory silence ... has a tendency to make men morose and hypocritical, discontented and designing, and ready to risk much in order to rid themselves of their trammels; while the liberty of uttering opinions, without obloquy and punishment, promotes satisfaction of mind and sincerity of conduct.<sup>26</sup>

To Bailey, a wide array of factors—moral, psychological, metaphysical-providential, historical—combined to make restraints on discussion a recipe for instability.

Bailey’s pacific argument for liberty of discussion was closely linked to two robust traditions of British political thought. The first tradition to influence Bailey’s theory of discussion was political economy. Over the course of his career Bailey would write voluminously on economic issues, and even for an era of burgeoning commitment to *laissez-faire* he was forceful in articulating the parallels he saw between the beneficent operation of the economic marketplace and the “natural progress of ideas.” Notice how he frames the thesis of the book in economic language:

[T]hat to check inquiry and attempt to regulate the progress and direction of opinions, by proscriptions and penalties, is to disturb the order of nature, and is analogous, in its mischievous tendency, to the system of forcing the capital and industry of the community into channels, which they would never spontaneously seek, instead of suffering private interest to direct them to their most profitable employment.<sup>27</sup>

Opinions, no less than prices, had (as Bailey *qua* economist would say) to “find [their] level.”<sup>28</sup> Interference with the distributive-competitive mechanisms in the intellectual as in the economic domain was futile at best and harmful at worst.

While Bailey’s psychology of opinion differed widely from that of his utilitarian predecessor, he was nevertheless returning to a Godwinian *façon de penser* in envisaging the destructive impact of persecution and censorship through the model of a protectionist trade policy. The analogy between trade and discussion was probably more central to Godwin’s *Political Justice* than to any work of political philosophy before Bailey’s time. Godwin believed that he was living at a moment of simultaneous economic and intellectual emancipation, and that the same “mistake” regarding the benefits of the “positive interference of society in its corporate capacity” had been “universally exploded” in the cases both of “commerce” and “speculative inquiry.” Like the nineteenth-century liberal reformer Bailey, the Enlightenment standard-

<sup>24</sup> For a characteristic statement of the traditionalist fear of the disintegrating impact of a free press, see the collection of Tory poet laureate Robert Southey’s political writings, *Essays, Moral and Political*, 2 vols. (London, 1832).

<sup>25</sup> Bailey, *Formation and Publication*, 153–54.

<sup>26</sup> *Ibid.*, 154–55.

<sup>27</sup> *Ibid.*, 97–98.

<sup>28</sup> Samuel Bailey, *Money and its Vicissitudes in Value* (London, 1837), 74.

bearer Godwin also moved seamlessly from the analogy between trade in goods and the circulation of opinions to the warning that encroachments on the latter could disrupt civil order: “by violently confining the stream of reflexion, and holding it for a time in an unnatural state, they compel it at last to rush forward with impetuosity, and thus occasion calamities, which, were it free from restraint, would be found extremely foreign to its nature.”<sup>29</sup>

The second ideological source from which Bailey drew in his depiction of the peaceable character of free discussion was the instrumental or *politique* justification of religious toleration and its principal authority, Locke.<sup>30</sup> Among the arguments for toleration that Locke had marshaled was the claim that the true threat to social harmony was not the plurality of religious beliefs but the state’s attempts to eradicate this plurality.<sup>31</sup> Naturally enough for an early-Enlightenment text, Locke’s defense of the peacemaking quality of toleration lacked the progressive, philosophy-of-history apparatus that entered into Bailey’s view of free discussion. Locke’s view of the counterproductiveness of persecution was, rather, founded entirely on observations concerning the psychology of victimization very similar to those Bailey would later use. For example, Locke denied that there was anything particularly intransigent about *religious* belief that turned adherents of those sects that received harsh treatment into rebellious subjects; if “those who have black Hair (for example) or gray Eyes” were singled out as objects of coercion and disadvantage, then “these Persons, thus distinguished from others by the Colour of their Hair and Eyes, and united together by one common Persecution, would be as dangerous to the Magistrate, as any others that had associated themselves meerly upon the account of Religion.” It was the response of victims to the ordeal of being targeted for their beliefs, rather than the content of those beliefs, which posed a danger to civil society. Bailey followed this reasoning closely; indeed, the absence of an examination of the content of beliefs as a possible threat to social order was even more complete in the *Formation and Publication* than it had been in the *Letter Concerning Toleration*, since Locke allowed that there were systems of belief (atheism and Roman Catholicism) whose content was sufficient to mark them off as a peril.<sup>32</sup> Bailey, on the contrary, was unwilling to designate any opinions as by their nature inconsistent with the requisites of civil society and therefore beyond the pale of legitimate discussion.

This instrumental defense of toleration was one of the most potent in Europe throughout the eighteenth century.<sup>33</sup> The view of toleration as (in David Hume’s words) a “paradoxical principle and salutary practice” retained its vigor through the great religious controversies of the opening decades of the nineteenth century,

<sup>29</sup> Godwin, *Political Justice*, 2:589–90, 600–1.

<sup>30</sup> On Locke’s status as a “Whig pillar” of toleration throughout the eighteenth century, see J. G. A. Pocock, *Virtue, Commerce, and History* (Cambridge, 1985), 229.

<sup>31</sup> “It is not the Diversity of Opinions, (which cannot be avoided) but the Refusal of Toleration to those that are of different Opinions, (which might have been granted) that has produced all the Bustles and Wars that have been in the Christian World, upon account of Religion.” John Locke, *A Letter Concerning Toleration*, trans. William Popple, ed. Mark Goldie (Indianapolis, 2010), 60.

<sup>32</sup> *Ibid.*, 13, 55–56, 50–53.

<sup>33</sup> For a contextualization of eighteenth-century theories of toleration, including the *politique* argument, see Richard Popkin and Mark Goldie, “Scepticism, Priestcraft, and Toleration,” in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge, 2006), 79–109, especially 99–109.

with such important pro-toleration voices as the historian Henry Hallam and the Anglican cleric Sydney Smith featuring it in their work.<sup>34</sup> In asserting the peacemaking power of the liberty of discussion, then, Bailey was drawing upon and broadening an argument for religious toleration that possessed both a distinguished lineage and contemporary relevance. Bailey extended the thesis that criminalizing opinion prompted civil strife *beyond the religious domain* to encompass opinions of all sorts. Bailey was fascinated by the religious, political, philosophical, economic, and ethical diversity of nineteenth-century England.<sup>35</sup> Believing that he was witnessing an unprecedented phenomenon of widespread public disagreement on a seemingly limitless range of issues, Bailey took the “paradoxical” defense of religious toleration a step further from an argument for the protection of various forms of religious worship and belief to a guarantee of the right to express any opinion on any subject.

## II. JAMES MILL AND THE WHIGS

In keeping with his enthusiasm for Bailey’s work, James Mill believed there was a positive connection between civil peace and a free press. Indeed, a decade before Bailey’s book or his own celebrated 1823 entry on the “Liberty of the Press” for the *Encyclopedia Britannica*, Mill had laid his own pacific rationale in a series of articles for the *Edinburgh Review*.

Mill’s take on the pacific argument had much in common with Bailey’s later version. For example, he highlighted his debt to *politique* thinking about religious toleration: before embarking on “any attempts to crush the liberty of the press,” Mill warned, statesmen ought to recall “one or two observations of Locke.”<sup>36</sup> There are, however, some notable differences between the two. Despite being a founder of classical liberal economics, Mill’s rendition did not utilize the lessons of political economy to clarify the natural laws governing the distribution of opinions. It also lacked the more providential, metahistorical aspects that Bailey would develop. The center of gravity for Mill’s case for the pacific and stabilizing qualities of a free press lay, instead, in three areas.

The first, which we have seen uniting Bailey with Locke and many others, was psychological. It consisted of an assessment of the effects of being victimized for one’s beliefs: to favor state intolerance was to commit to the perplexing proposition that “when men are ill used, they will be quiet subjects and cordial allies; when well used, active and dangerous enemies.”<sup>37</sup> Relative to the toleration arguments of his predecessors, Mill broke no new ground on this front.

The second area of concern for Mill was historical. Against the caricature of the utilitarians as approaching political questions in an ahistorical manner, Mill *père*

<sup>34</sup> See David Hume, *History of England: From the Invasion of Julius Caesar to the Revolution of 1688*, 6 vols. (Indianapolis, 1983), 5:130; Henry Hallam, *The Constitutional History of England, from the Accession of Henry VII to the Death of George II*, 6th ed., 2 vols. (London, 1850), 1:117, 166, 177; Sydney Smith, *A Letter to the Electors upon the Catholic Question* (York, 1826), 11–17.

<sup>35</sup> Bailey, *The Pursuit of Truth and the Progress of Knowledge*, 236–37.

<sup>36</sup> James Mill, “Sur la Tolérance Religieuse,” *Edinburgh Review* 16, no. 32 (August 1810): 413–30, at 426–27.

<sup>37</sup> *Ibid.*, 426. His *Principles of Toleration* was also replete with citations of Locke on the ethics of forming beliefs; James Mill, *Principles*, 10, 24–30.



was preoccupied with showing that the historical record bore out his depiction of free discussion as an instrument of peace. This preoccupation reflected the fact that the specter of the French Revolution loomed over all radical activism in the era. The cataclysm across the Channel was a constant feature of arguments for a restrictive press policy;<sup>38</sup> as Mill's contemporary John George, in his own examination of the theory of public discussion, lamented, "arbitrarily-disposed persons have notably made use of the French Revolution to inveigh" against the liberty of the press, as "against every species of reform."<sup>39</sup> For Mill's pacific claim to stand as an empirically true statement in the science of politics, this seeming counterexample would have to be explained away—either as a genuine exception that nevertheless did not disprove the rule or as an event which, despite appearances, did not in fact run counter to the general proposition of the innocuousness of a free press at all.

The former course was eminently available to Mill; it was the route that George, for instance, took in his tract on the press.<sup>40</sup> To George's mind, the admission that there was a chance that "the right of political discussion," if "abused," could lead to "anarchy" or "despotism" did not undermine his stance on loosening the restraints on expression. Nor was he wrong to think this. Assuming that peace and stability were the ends in view, it was not required for the demonstration that restrictions on opinion were instrumentally irrational that there be no possibility of the freedom of the press eventuating in disorder; it was enough that a free press be shown to be a more reliable means of achieving these ends than a restricted one. And George was confident that the probabilities supported a freer press.<sup>41</sup> Despite the black mark of the French Revolution, in which a press run amok had caused immense harm, George was convinced that the normal course of events told in favor of wide liberty of discussion.

But this moderate, probabilistic route did not appeal to James Mill. Unlike George, Mill elected the more ambitious course of denying that any frightful lessons about the result of giving free rein to the publication of opinions could be drawn from the example of the Revolution. Instead, he turned on its head the conservative invocation of the French Revolution as a model for the chaos that would follow any expansion of the rights of discussion. The moral of the "extraordinary event" was, on Mill's telling, exactly the opposite: "It was not the abuse of a *free* press which was witnessed during the French Revolution; it was the abuse of an enslaved press"; "so far from the freedom of the press being the cause of the French revolution, had a free press existed in France, the French revolution never would have taken place." The true lesson of France's "public disorders" was that the safest route open to European societies was to leave the press unfettered. When one looked closely, Mill added, what appeared to be "abuses of the right of discussion"

<sup>38</sup> See Lord Grenville's conviction that an uncontrolled press would plunge England into a Terror of its own; William Wyndham Grenville, *Substance of the Speech of the Right Hon. Lord Grenville in the House of Lords, November 30, 1819* (London, 1820).

<sup>39</sup> John George, *A Treatise on the Offence of Libel: With a Disquisition on the Right, Benefits and Proper Boundaries of Political Discussion* (London, 1812), 274.

<sup>40</sup> *Ibid.*, 274–75.

<sup>41</sup> *Ibid.*, 188, 257.

or “the license of the press” were revealed as epiphenomenal, mere symptoms of the deeper afflictions that actually jeopardized the stability and integrity of a society.<sup>42</sup>

Why was Mill certain not only that the press had been a nonfactor in sparking the atrocities, but also that it was the *constraints* on the press that were responsible for many of the worst features of the Revolution? Though he did not parse them into neat categories, he in effect identified two distinct paths by which the absence of freedom of discussion in *ancien régime* France had contributed to the calamity of the Revolution. The first, noted above in Bailey, was what we might call the channeling problem of restricting discussion. The proponents of a doctrine, if hindered from championing it through the peaceable mechanisms of debate and deliberation, would eventually have recourse to the only means left: arms. “Had real freedom of the press been enjoyed, then the honest men whom France contained [would have] been left a channel by which to lay their sentiments before the public,” and they would not have had cause to pursue their goals by any other route than patient appeal to the minds of their countrymen. In summation, Mill quoted approvingly a French work on the press: it was only by “extending to all the privilege inherent to man of stating his thought, that, in ceasing to be exclusive, it ceases to be harmful.”<sup>43</sup>

The second way in which Mill perceived the “slavery of the press” to have contributed to the collapse of French society connected the pacific argument more closely with the argument about the epistemic and intellectual benefits of free discussion. On this line of analysis, the outrages that afflicted France after 1789 were made possible by the population’s lack of education and enlightenment. But these deficiencies of French life were themselves the product of government policy to keep public discussion to a minimum: “had a means been secured of instructing the people ... the enormities of the revolution would have been confined within a narrow compass, and its termination would have been very different.”<sup>44</sup> An ignorant people was more likely than an enlightened one to commit atrocities, to be misled by demagogues, and to misunderstand the principles of social order. Fortunately, Mill announced, there was an easy remedy for this unenlightened condition: “if the people are ignorant, we have only to give them the inestimable advantage of discussion, equally free on both sides, and they will be ignorant no longer.”<sup>45</sup>

What Mill had in mind here was not solely intellectual improvement, the amelioration of subjects’ ideas and mental capacities. His notion of the educative effect of free discussion also had a moral dimension. Free discussion, Mill claimed, trained the popular mind in the value of moderation. “Where a press has been previously free, there are means for making the people hear both sides”; “a people who have been habituated to hear both sides” would be duly suspicious of the fanaticism of a “Robespierre” and less liable to grasp at “the designs of the wicked.” Rather

<sup>42</sup> James Mill, “Liberty of the Press,” *Edinburgh Review* 18, no. 35 (May 1811): 98–123, at 118–21. The future Whig prime minister Lord John Russell also defended the press as epiphenomenal in this way: *An Essay on the History of the English Government and Constitution from the Reign of Henry VII. to the Present Time* (London, 1821), 293–94.

<sup>43</sup> James Mill, “Liberty of the Press,” 119–20 (translation mine). He was quoting the *Memoires de Candide, sur la Liberté de la Presse ...* (1802) by Jean-Baptiste-Claude Delisle de Sales.

<sup>44</sup> *Ibid.*, 119.

<sup>45</sup> James Mill, “Liberty of the Continental Press,” *Edinburgh Review* 25, no. 49 (June 1815): 112–34, at 125.

than rushing after quack schemes or giving themselves over to extremists, a people edified by discussion would distrust “authors of mischief” and remain committed to the slow process of arriving at consensus through argument and persuasion.<sup>46</sup>

Neither of these diagnoses of the instability- and violence-producing character of the *ancien régime* press policy were peculiar to a “philosophic radical” ideology. Quite the contrary, Whigs who prided themselves on moderation and prudence were as comfortable articulating them as Mill.<sup>47</sup> The channeling dimension was, for instance, the central idea of the great Whig statesman and historian Thomas Macaulay’s support for a free press:

[W]hen the flames are pent up in the mountain, then it is that they have reason to fear; then it is that the earth sinks and the sea swells; then cities are swallowed up; and their place knoweth them no more. So it is in politics: where the people is most closely restrained, there it gives the greatest shocks to peace and order.<sup>48</sup>

To include a view in the public discussion was to guarantee that it would have no noxious effects. If the view were unsound, it would, after being trumpeted by some ambitious individual or disgruntled group, lose out to more strongly reasoned opinions; if sound, it would not need to employ violent or insurrectionary means to secure its ascendance but instead would triumph peaceably and rationally. Macaulay provided this aphoristic summation: “the danger of states is to be estimated, not by what breaks out of the public mind, but by what stays in it.”<sup>49</sup>

The second explanation that Mill supplied for how the absence of free discussion in France had prepared the way for chaos and disaster—the one that invoked the educative power of discussion—was equally agreeable to the Whig mindset. The great Whig politician Henry Brougham scolded those who “fe[lt] alarmed” at the nascent march of mind they were witnessing: “real knowledge never promoted turbulence or unbelief,” but “a people kept in the dark, are sure to be easily disquieted; every breath makes them start; all objects appear in false shapes; anxiety and alarm spread rapidly without a cause.”<sup>50</sup> Thus “a just and lawful government may safely, and even advantageously, encourage the freest discussion.”<sup>51</sup> Macaulay applied to the English Civil War of the 1640s the same logic: “The government had prohibited free discussion. . . . Their retribution was just and natural. If our rulers suffered from popular ignorance, it was because they had themselves taken away the key of knowledge.”<sup>52</sup> From the Whig perspective, all societies were unstable which rested on a populace untutored by free discussion.

<sup>46</sup> *Ibid.*, 115.

<sup>47</sup> See Vincent Starzinger, *The Politics of the Center: The Juste Milieu in Theory and Practice, France and England, 1815–1848* (New Brunswick, 1991).

<sup>48</sup> Thomas Babington Macaulay, “A Conversation between Mr. Abraham Cowley and Mr. John Milton, Touching the Great Civil War,” in *The Miscellaneous Writings of Lord Macaulay*, 2 vols. (London, 1860), 1:101–24, at 122.

<sup>49</sup> Thomas Babington Macaulay, “Southey’s Colloquies,” in *Critical and Historical Essays*, 5th ed., 2 vols. (London, 1848), 1:250.

<sup>50</sup> Henry Brougham, *Inaugural Discourse of Henry Brougham, Esq., M.P.: On Being Installed Lord Rector of the University of Glasgow* (Glasgow, 1825), 47; *idem*, “Liberty of the Press and Its Abuses,” *Edinburgh Review* 27, no. 53 (September 1816): 102–44, at 121.

<sup>51</sup> Brougham, “Liberty of the Press and Its Abuses,” 121.

<sup>52</sup> Macaulay, “Milton,” in *Critical and Historical Essays*, 1:41.

We have now seen two of the three major strands of James Mill's version of the pacific-stabilizing defense: the psychological insight into the counterproductiveness of penalizing opinions and the historical analysis elaborated to discredit the use of the French Revolution as evidence of the dangers of a free press. The third strand moved to an assessment of the press as a mediator between rulers and subjects. It is a commonplace that *public opinion* was a leading concept of British liberalism in James Mill's lifetime; political thinkers believed that public opinion had arisen as a new and powerful political force around the turn of the century.<sup>53</sup> Interest in and convictions about politics, they believed, had spread beyond a narrow aristocracy and this politicization of a wider section of society had to be taken account of by governments—to pay no heed to the verdicts of this amorphous but engaged body of citizens was to risk being toppled by a disaffected public opinion. Only a free press, Mill argued, was capable of bridging the gap between the two distinct but coequal forces of government and public opinion and of thereby assuring the stability of society. He drove home the point with characteristic energy:

By the free circulation of opinions, the government is always fully apprised, which, by no other means it ever can be, of the sentiments of the people . . . . We may safely affirm, that more freedom of the press granted to our own country, would have the salutary effect of harmonizing, to a much greater degree, the tone of government and the sentiments of the people, and of rendering all violent opposition between them still more improbable than even at present it is.<sup>54</sup>

Through a system of free discussion government and public opinion, instead of standing in antagonism to one another, were brought into fruitful and steady connection.

On this front—as in his identification of the destabilizing consequences of the lack of press freedom in eighteenth-century France—James Mill was once again in alignment with the Whigs whom he would come so openly to despise in the 1820s and 1830s.<sup>55</sup> Indeed this argument about the press harmonizing government and public opinion was at the center of the Whig tradition. For the Whigs, politics was essentially an arena for prudent adjustment; the duty of the statesman was to reform laws and institutions in order to keep pace with a society in motion. From this perspective, an intermediary between governing circles and citizens' beliefs was indispensable, for the latter were the most important data of which the former

<sup>53</sup> Dror Wahrman calls the 1810–20s the “heyday of public opinion”; Wahrman, *Imagining the Middle Class: The Political Representation of Class in Britain, c. 1780–1840* (Cambridge, 1995). On the concept in this period, see Samuel Beer, “The Representation of Interests in British Government: Historical Background,” *American Political Science Review* 51, no. 3 (September 1957): 613–50, section 5; Norman Gash, *Politics in the Age of Peel* (New York, 1971), introduction, chap. 1; J. R. Pole, *Political Representation in England and the Origins of the American Republic* (Berkeley, 1966), 486–87; Xiaobo Zhai and Michael Quinn, eds., *Bentham's Theory of Law and Public Opinion* (Cambridge, 2014). And see James Thompson's overview of the literature on public opinion in the late-eighteenth and early nineteenth centuries: Thompson, *British Political Culture and the Idea of Public Opinion, 1867–1914* (Cambridge, 2013), chap. 1.

<sup>54</sup> James Mill, “Liberty of the Press,” 121.

<sup>55</sup> For James Mill's negative assessment of the Whigs, see Donald Winch, “The Cause of Good Government: Philosophic Whigs vs. Philosophic Radicals,” in *That Noble Science of Politics*, ed. Stefan Collini, Donald Winch, and John Burrow (Cambridge, 1983), 91–126.

could take account; to veer too far from the dictates of public opinion was to undermine the goal of stability through responsive reform. "Where there is a free press, the government must live in constant awe of the opinions of the governed," wrote Macaulay.<sup>56</sup> Only through a free press could subjects' degree of satisfaction with government be accurately ascertained; much of the value of a free press, to the Whig, was that it "reveals discontents, which can then be dealt with by timely concessions."<sup>57</sup> Since informed governments were the only ones that could achieve stability, a free press was a necessity.

### III. JS MILL'S COMPLICATED RELATIONSHIP WITH THE PACIFIC ARGUMENT

The argument for liberty of discussion from considerations of peace and stability was well-developed during John Stuart Mill's youth and early adulthood. And yet Mill steered clear of this line of defense. Mill's silence regarding the argument is particularly deafening in *On Liberty*, but his marginalization of it extends beyond his famous treatise.<sup>58</sup> Two reasons can be given for this curious absence. First, Mill was ambivalent about whether the empirical claim that freedom of expression and publication helped the cause of civil peace and stability was accurate. On the one hand, he believed that particular cases could arise in which a complete liberalization of discussion might help avoid violence or revolution. On the other hand, as a more general theoretical proposition, he held a view that, while not logically inconsistent with endorsing the pacific argument, was difficult to reconcile at the level of actual political life.

The difficulty arises from Mill's subscription to the "Germano-Coleridgean doctrine" on the "condition[s] of stability in political society."<sup>59</sup> He espoused a consensus-based theory of stability on which "a common system of opinions" was required to bind citizens together; without it, "the State is virtually in a position of civil war; and can never long remain free from it in act and fact."<sup>60</sup> A "fixed point," a "*something* which is settled ... and not to be called into question," were essential ingredients of a durable body politic.<sup>61</sup> So important was this cohesive role of shared sentiments that, well after Mill's greatest attraction to "organicist" or "conservative" thought had waned, he still rejected the feasibility of representative democracy in multicultural societies on the ground that these societies were incapable of forming a "united public opinion."<sup>62</sup>

<sup>56</sup> Macaulay, "William Pitt, Earl of Chatham," in *Critical and Historical Essays*, 2:190. See also Russell, *History of the English Constitution*, 2nd ed. (London, 1823), 471–72.

<sup>57</sup> Joseph Hamburger, "The Whig Conscience," in *The Conscience of the Victorian State*, ed. Peter Marsh (Syracuse, 1979), 19–38, 29.

<sup>58</sup> For rare instances when Mill gestured toward themes reminiscent of the classic pacific arguments, see John Stuart Mill, "Law of Libel and Liberty of the Press," in *CW*, 21:1–34; idem, "The French Law against the Press," in *CW*, 25:1116–18; idem, Speech on Meetings in Royal Parks, 22 July 1867, in *CW*, 28:216–17.

<sup>59</sup> John Stuart Mill, "Coleridge," in *CW*, 10:125, 134.

<sup>60</sup> John Stuart Mill, *System of Logic*, in *CW*, 8:926; idem, "Coleridge," in *CW*, 10:134.

<sup>61</sup> *Ibid.*

<sup>62</sup> Mill, *Considerations on Representative Government*, in *CW*, 19:547.

As an empirical matter, then, a situation of near-complete consensus on a small but crucial set of values was a prerequisite of stability. While this emphasis on consensus never led Mill to abandon the principle of freedom of discussion,<sup>63</sup> it did prevent him from seeing this liberty as a stabilizing factor. For while one could envisage epochs in which the liberty of discussion would be consistent with maintaining this “common estimation [that certain matters were] placed beyond discussion,” no such harmony was possible in “ages of transition” such as Mill believed his own lifetime to be.<sup>64</sup> In these ages “to discuss, and to question established opinions, are merely two phases of the same thing.”<sup>65</sup> Nor did Mill regret this critical temper of his age. He wanted every imaginable doubt about social-political norms to be searched to its roots even if it meant turning up a bevy of wrongheaded, alarming-sounding views along the way.<sup>66</sup> A new consensus sufficiently well-founded to exist “beyond discussion” stood at “an incalculable distance” from the present moment when the processes of deliberation and agitation were doing more to discredit old “errors” than to propagate new verities, and consequently the debates carried on through the freedom of the press were bound for the foreseeable future to be agents of disintegration and diversity rather than of cohesion and consensus.<sup>67</sup>

Despite his standing as Western political theory’s most famous apologist for freedom of discussion, Mill’s honesty prevented him from claiming for his cherished principle attributes which he was unsure of its possessing. He embraced the liberty of discussion not because he thought it was without risks, but because he thought the risks were worth running.<sup>68</sup> Intellectual-expressive freedom was a good that far outweighed any fears of unrest or instability, and this freedom was to be accepted not out of blindness to the attendant perils but because those perils were recognized and determined to be of lesser consequence than an infringement on the rights of discussion.

This last thought brings us to a second, and deeper, reason for Mill to have been dissatisfied with the pacific argument: even if this argument had been true, it would have been the wrong kind of reason on which to ground one’s support for freedom of

<sup>63</sup> See O’Rourke’s disproof of Himmelfarb on this point: O’Rourke, *Mill and Expression*, 53–56. For Himmelfarb’s interpretation of Mill as abandoning his support of freedom of the press during the height of his Coleridgean period, see Gertrude Himmelfarb, *On Liberty and Liberalism: The Case of John Stuart Mill* (New York, 1974), esp. 46–47.

<sup>64</sup> Mill, “Coleridge,” in *CW*, 10:134. On the notion of the “age of transition” in Victorian Britain, see Walter Houghton, *The Victorian Frame of Mind* (New Haven, 1957), 8–23.

<sup>65</sup> John Stuart Mill, “The Spirit of the Age, I,” in *CW*, 22:233.

<sup>66</sup> Hence his praise for the St. Simonians for being “the only association of public writers existing in the world who systematically stir up from the foundation all the great social questions,” as well as his repeated commendations of working-class voices in politics even when they appeared to be doing no more than “ventilat[ing] their nonsense” and giving voice to “wild aberrations,” precisely because the working classes were less inclined than other segments of society to accept conventional principles unquestioningly; see John Stuart Mill, “Comparison of the Tendencies of French and English Intellect,” in *CW*, 23:444; idem, “Recent Writers on Reform,” in *CW*, 19:350.

<sup>67</sup> Mill, *On Liberty*, in *CW*, 18:252; idem, “The Spirit of the Age, I,” in *CW*, 22:233. For an analysis of how Mill came to discard the idea that an end to the current age of transition would be realized in the future, see Ben Knights, *The Idea of the Clerisy in the Nineteenth Century* (Cambridge, 1978), 169–70.

<sup>68</sup> Even if these risks included revolution. Though Mill deplored the revolutionary mindset of the French, he had no general normative opposition to revolution; see Geraint Williams, “J. S. Mill and Political Violence,” *Utilitas* 1, no. 1 (March 1989): 102–11.

discussion. We saw above that the justification from peace and stability was agreeable to Whigs such as Brougham. To the young Mill, this ability of the argument to appeal beyond the radicals to the Whig mainstream was no recommendation for it, since Mill had nothing but contempt for the Whig *coterie* that he thought lacked any genuine principles.<sup>69</sup> The pacific argument was a perfect rhetorical tool for such “Trimmer[s]” who understood politics in a low way, as a means of guaranteeing peace through compromise rather than as a domain in which to “achieve a moral purpose.”<sup>70</sup> Those who provided a temporizing or instrumental account of liberty of expression, Mill thought, could not be trusted to stand by this liberty when its instrumental value appeared to decrease; unsurprisingly, he showered scorn on Brougham’s defense of the free press for what he took to be its tepid and qualified character. Whigs were not reliable allies on the question of the freedom of the press, and the pacific argument as deployed by such unprincipled powerbrokers could only be a mealy mouthed partisan gambit.<sup>71</sup> This attitude, Mill was emphatic, merited condemnation.

As Mill would have known well from the confidence with which the likes of his father and Samuel Bailey asserted the pacific justification, nothing about this justification precluded it from forming part of a profound moral commitment to the liberty of the press. On its own, however, the argument could be deployed by thinkers whose understanding of the value of freedom of discussion was, to Mill, inadequate. For example, Archibald Alison, a Scottish Tory whom Mill’s “fingers itched to be at,”<sup>72</sup> wished that the government would undertake a project of considerable financial support to establish a permanent, state-endowed conservative press corps in order to defeat the detestable “pleaders on the side of democracy.” Given the extreme skepticism with which Alison regarded the ability of free discussion to generate (what he believed to be) the correct answers on political and economic questions, he might have been expected to reject any open press policy and to recommend the reinstatement of a persecutorial censorship regime. Yet he explicitly forswore any scheme to reduce the press to “slavery” through “brutal remedies” or “coercing the press by fetters or prosecutions,” and he stopped at his proposal to fight the pen of falsehood with only the (state-subsidized) pen of truth because repressive efforts “would be the prolific parent of never-failing discord.”<sup>73</sup> Had Alison lived to read *On Liberty*, he would not have felt much sympathy with its optimistic rationalism. And yet he was an enemy of persecution, because he did not want his country to be plunged into disorder and disharmony.

<sup>69</sup> John Stuart Mill, “Walsh’s Contemporary History,” in *CW*, 6:342.

<sup>70</sup> Hamburger, “The Whig Conscience,” 28. On the young Mill’s, and the philosophic radicals’ contempt for the Whigs more generally, see Joseph Hamburger, *Intellectuals in Politics: John Stuart Mill and the Philosophic Radicals* (New Haven, 1965), 65–67.

<sup>71</sup> John Stuart Mill, “Periodical Literature: Edinburgh Review,” in *CW*, 1:298–300, 294. The Whigs’ record on liberalization of discussion during the 1820s and early 1830s was, from the radical perspective, deficient: Wickwar, *Struggle for Press*, 146, 152, 292, 301; W. J. Linton, *James Watson: A Memoir* (Manchester, 1880), 42–43.

<sup>72</sup> John Stuart Mill, Letter to Macvey Napier, 15 October 1842, in *CW*, 13:551.

<sup>73</sup> Archibald Alison, “The Influence of the Press,” *Blackwood’s Edinburgh Magazine* 36, no. 226 (September 1834): 373–91, at 380, 382, 377, 389. The final line quoted is itself an approving quotation by Alison of a Dutch book on the press.

The best example of how far a Victorian could be from Mill ideologically while also supporting the freedom of the press as an instrument for ensuring domestic tranquility is James Fitzjames Stephen, the author of the most famous contemporary attack on Mill's political theory. To see this, it is important to appreciate how Stephen perceived the disagreement between Mill and himself. Though it is tempting to believe that Stephen was in diametrical opposition to Mill,<sup>74</sup> he was, in fact, careful to clarify that he did "not object to the practice of modern Liberals." He had no doubt that a return to the persecutory systems of earlier eras would be a momentous mistake. How could a writer who strove to puncture a theory formed on a utopian "estimate of human nature" nevertheless assent, like his adversary Mill, to the practice of liberty of thought and discussion as unreserved as Mill's?<sup>75</sup>

A principal component of Stephen's backing for intellectual freedom was his own version of the pacific strand of thought. "A perfectly free press is one of the greatest safeguards of peace and order," he affirmed; persecution of opinions was "quite out of the question" because its implementation would either be ineffectual or "absolutely destructive and paralyzing."<sup>76</sup> Stephen agreed that the French Revolution was, as James Mill had shown, a lesson in the dangers of a censored and restrictive policy on the press: in the eighteenth century "arbitrary power" had misdirected the "French intellect" away from its natural "channel[s]."<sup>77</sup> In "a rich and intelligent country" such as modern England the claims of the pacific argument were too compelling to be ignored, even by a writer whose mission it was to discredit "naïve" forms of liberalism by emphasizing the irreducible centrality of "force" even to "parliamentary governments."<sup>78</sup> Liberty of discussion, Stephen believed, should be respected because it bolstered rather than compromised political stability.

Alison's and Stephen's mindsets were foreign to Mill. Mill wanted the freedom of the press to be valued as a good in its own right. To be sure, Mill's official word was that the liberty of discussion, like any liberty, had no freestanding, *a priori* normative status. Its official justification was consequentialist; he made no appeal to "abstract right."<sup>79</sup> Mill, true to his Benthamite-utilitarian heritage, refused to declare that the liberty of discussion was an "inherent moral truth" or a "natural right" of any kind, and instead insisted that this liberty, like all facets of social and political life, had to be justified on the basis of the benefits which it produced. As his father and Samuel Bailey demonstrate, to emphasize peace and stability was perfectly consistent with this philosophy, for these were goods which would count on the positive side of the ledger when one set the costs and benefits of liberty against one another.

Yet this formal utilitarian framework had only a loose connection with John Stuart Mill's support of the freedom of thought and discussion—loose enough, in fact, that many fellow Victorians came to see Mill's politics as a hybrid of utilitarianism and

<sup>74</sup> See Stuart Warner, foreword to James Fitzjames Stephen, *Liberty, Equality, Fraternity* (Indianapolis, 1993), ix–xxiv, at xxii.

<sup>75</sup> Stephen, *Liberty, Equality, Fraternity*, 67, 31.

<sup>76</sup> James Fitzjames Stephen, "Journalism," *Cornhill Magazine* 6, no. 31 (July 1862): 52–63, at 57; idem, *Liberty, Equality, Fraternity*, 51.

<sup>77</sup> James Fitzjames Stephen, "Burke and de Tocqueville on the French Revolution," *Horne sabbaticae*, 3 vols. (London, 1892), 3:153–71, at 169.

<sup>78</sup> Stephen, "Journalism," 57; idem, *Liberty, equality, fraternity*, 3, 20–21.

<sup>79</sup> Mill, *On Liberty*, in *CW*, 18:224.



natural rights. For on the ground of actual politics and public discourse Mill had no desire for the liberty of thought and discussion to be subject to a calculus in which it would be weighed as one of potentially many factors felt to be of present political import. This calculative or instrumental mode of reasoning would have been a hindrance to the emergence of the only proper foundation for the liberty of discussion: the “conscientious sense of the importance to mankind of the equal freedom of all opinions.”<sup>80</sup> Mill wanted the liberty of discussion to be affirmed by society as a dictate of justice and a vital element of social and intellectual well-being, not simply acquiesced in as a *modus vivendi* by an assortment of groups who would have preferred to impose their “sympathies and antipathies” on society as a whole.<sup>81</sup> For Mill, “a clear insight” into the “necessity of antagonist modes of thought” was “the only rational or enduring basis of philosophical tolerance,” and he wrote that without it “liberality in matters of opinion” might degenerate into nothing but “a polite synonym for indifference between one opinion and another.”<sup>82</sup> As his discomfort with the pacific theory indicates, he would have found it equally discreditable if his compatriots came to accept liberty on the ground that it was a prudent method for keeping the peace.

Thus even if it had held absolutely as an empirical law of politics, Mill would still have felt a sense of failure if the pacific argument had kept *On Liberty*'s proofs of liberty of opinion's contributions to humanity's intellectual and moral progress from attaining their rightful place at the center of British liberalism. The pacific argument, in Mill's eyes, encouraged a view of liberty of discussion as a concession, an accommodation to an unfortunate but intransigent reality—exactly the mindset that he found least conducive to a genuine appreciation of intellectual and expressive freedom. Perhaps, then, it was not much of a tragedy to Mill that, to use his terminology, the pacific argument was only a “partial truth” anyway.<sup>83</sup>

#### IV. CONCLUSION

The recovery of the pacific argument modifies our understanding of nineteenth-century liberalism in important ways that have broader ramifications for the history of British political thought. To start with, despite the work of the late John Burrow and a few others, there is a strong perception of a firm division between the outlooks of Whigs and radicals-utilitarians.<sup>84</sup> In fact, on the crucial political and theoretical controversy about the nature of the press and its freedom, these groups were united at the start of the century and in the period of reform in their vision of a free press as an instrument not only of enlightenment but also of stability. Indeed, in this sense both Whigs and early radicals emerge as theorists of the union of order and progress that is usually ascribed to French movements like Comtism and

<sup>80</sup> John Stuart Mill, *Autobiography*, in *CW*, 1:53.

<sup>81</sup> Mill, *On Liberty*, in *CW*, 18:221.

<sup>82</sup> Mill, “Coleridge,” in *CW*, 10:122.

<sup>83</sup> *Ibid.*, 124.

<sup>84</sup> See John Burrow, *Whigs and Liberals: Continuity and Change in English Political Thought* (Oxford, 1988); Collini, Winch, and Burrow, *That Noble Science of Politics*; Jack Lively and John Rees, eds., “Introduction,” in *Utilitarian Logic and Politics: James Mill's “Essay on government,” Macaulay's Critique, and the Ensuing Debate* (Oxford, 1978), 1–50.

doctrinairism and to those English figures (like the younger Mill) who were influenced by them.<sup>85</sup>

Similarly, the character of the pacific defenses of the press charted here challenges the standard notion of a sharp boundary between Enlightenment and nineteenth-century political thought. Excepting certain revisionist accounts, the political thought of the latter period is still often read as decisively breaking with the former, with romanticism replacing reason, history displacing nature, utility ending the enthusiasm for the Rights of Man. The authors surveyed in this essay, on the contrary, display continuity with earlier traditions of thought. Complicating the verdict that there was a move away from Locke in nineteenth-century liberalism,<sup>86</sup> philosophic radicals like James Mill incorporated Lockean themes into their case for liberalizing the press; their view of free discussion drew from and broadened the Enlightenment vision of religious toleration as an instrument for achieving peace in conditions of religious diversity. Likewise, the “free trade” in ideas was an image that functioned in much the same way in the late-Enlightenment revolutionary philosophy of William Godwin as it did in the work of Bailey, a thinker typical of the Age of Reform. In calling upon the resources of political economy and religious toleration, nineteenth-century theorists of the relationship between stability and expressive freedom were working in grooves well worn by their predecessors.

Furthermore, reconstruction of the pacific strand of free press argumentation deepens our understanding of two other concepts that frequently appear in studies of nineteenth-century liberalism, but often without the necessary precision. The first is that of the marketplace of ideas. Perhaps due to Justice Holmes’s popularization of the marketplace of ideas as the “best test of truth” and its (incorrect) association with John Stuart Mill,<sup>87</sup> the analogy of freedom of opinion with the competition of goods in the market is usually thought of as a way of explaining intellectual progress—the triumph of truths over falsehoods.<sup>88</sup> But this is only part of what it meant at its origins, when it also served as a way of expressing the faith that the contest of ideas could occur peacefully. To be sure, the marketplace of ideas expressed a mechanism whereby true ideas would eventually defeat false ones; but it expressed as well the hope that, with the end of “monopolies” for favored beliefs and “protections” against ill-regarded ones, differing ideas would be able to circulate without sparking violence and disorder.

The second concept that is enriched by the analysis of the pacific theory undertaken here is that of public opinion. As noted above, the political thought of the first half of

<sup>85</sup> See Gertrud Lenzer, ed., “Introduction: Auguste Comte and Modern Positivism,” in *Auguste Comte and Positivism: The Essential Writings* (New Brunswick, 1998), xxxi–lxxxii; Aurelian Craiutu, *Liberalism under Siege: The Political Thought of the French Doctrinaires* (Lanham, 2003). On English Comtism, see Christopher Kent, *Brains and Numbers* (Toronto, 1978).

<sup>86</sup> See Duncan Bell, “What Is Liberalism?,” *Political Theory* 42, no. 6 (December 2014): 682–715.

<sup>87</sup> Oliver Wendell Holmes, Jr., Dissent in *Abrams v. United States*, in *The Essential Holmes: Selections from the Letters, Speeches, Judicial Opinions, and Other Writings of Oliver Wendell Holmes, Jr.*, ed. Richard Posner (Chicago, 1992), 316–20. Jill Gordon is one of the few scholars to recognize that it is incorrect to attribute “the marketplace of ideas” to Mill: see Gordon, “Mill and the ‘Marketplace of Ideas,’” *Social Theory and Practice* 23, no. 2 (Summer 1997): 235–49.

<sup>88</sup> See Alvin I. Goldman and James C. Cox, “Speech, Truth, and the Free Market for Ideas,” *Legal Theory* 2, no. 1 (March 1996): 1–32; Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, 2013), 54.

the nineteenth century was deeply concerned with the nature and significance of public opinion. Yet modern scholarship rarely relates this sociological observation to the theoretical question of how to justify the freedom of the press faced by liberals of the time. Nevertheless, insofar as liberal-minded thinkers strove to portray the liberty of discussion as an instrument of stability as well as a precondition for the discovery of truth, they developed the argument that, once public opinion had emerged as a political force, abridgments of the expressive freedoms could only have a destabilizing impact. The political sociology of opinion that liberals of the era were elaborating fed back into foundational normative arguments about the meaning and value of freedom of expression in ways hitherto insufficiently explored.

Finally, seen against the intellectual backdrop that I have sketched here, John Stuart Mill's avoidance of the pacific argument looks less like a mere oversight than a meaningful choice of one strand of liberalism over another, privileging a more moralistic liberalism which he believed was less tainted by instrumentalism. This turn away from the pacific school of thought links the younger Mill more closely to modern political theory; when contemporary political theory takes up the subjects of toleration and intellectual freedom, it likewise tends to ignore the problem of the conditions of social peace and order. Consequently, beyond their historical significance, the nineteenth-century pacific theorists also hold a theoretical claim to our consideration. For they represent the last sustained effort of British liberalism to address the question of how a society can be at once stable and intellectually free.