

ORIGINAL ARTICLE

## Re-Reading Morant Bay: Protest, Inquiry, and Colonial Rule

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### Abstract

The 1865 Morant Bay Rebellion figures prominently in scholarship on modern Britain, colonial Jamaica, and the British Empire, as a milestone of post-emancipation protest, a turning point in British race-thinking, and a focal point for debates on martial law and British justice. This article presents a new interpretation of the rebellion's legal and political significance. Focused on processes of formal inquiry, I argue that legal analysis reshaped the political "moral" of the event. For the rebellion's participants and some British observers, Morant Bay challenged the practice of colonial rule. But beginning with the royal commission of inquiry called to investigate the suppression, formal inquiry displaced the systemic critique that had largely motivated the uprising. Focused increasingly on the nature of martial law and culminating in the criminal prosecution of Jamaica's colonial governor, legal debate and analysis transformed the scandal's moral center and turned Morant Bay into a new justification for further and more centralized imperial control. In developing these arguments, the article examines law's capacity to read, write, and exclude competing narratives of empire. In so doing, it contributes to scholarship on scandal and legitimation, and offers a new interpretation of a seminal nineteenth-century debate on the use of martial law.

On October 11, 1865, a group of black Jamaicans armed with cutlasses and sticks approached the colonial courthouse at Morant Bay, on the southeastern side of the island. Their immediate grievance was the attempted arrest, the day before, of Paul Bogle, a Native Baptist preacher and social activist in the nearby community of Stony Gut. A set of social and political concerns also underlay their protest: increased taxation, widespread poverty, a lack of political representation, and a legal system dominated by planters' interests.

At the courthouse, the protesters outnumbered the militia charged with protecting government property. Undeterred by a reading of the Riot Act, the crowd refused to disperse. After militia opened fire, the protesters attacked

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and burned the courthouse, killing the chief magistrate of the court and seventeen others. Many more subsequently joined, attacking plantations across the parish of St Thomas-in-the-East, as the protest grew into a larger uprising.<sup>1</sup>

In response, the governor of Jamaica, Edward John Eyre, convened a war council and declared martial law. To the extent that there was a “wide-spread rebellion,” as Eyre claimed at the time, the state suppressed such resistance within two days.<sup>2</sup> Martial law, however, remained in effect throughout the county of Surrey (excluding Kingston) for thirty days. During that period, soldiers killed 439 people, flogged no fewer than 600, and burned 1,000 homes.<sup>3</sup> A royal commission charged in the aftermath with investigating the event called these acts “excessive,” “reckless,” and “wanton and cruel.”<sup>4</sup> Edward Bean Underhill, leader of the Baptist Missionary Society and a principal critic of Governor Eyre, described the suppression more emphatically as “a reign of terror” in which “no man’s life was safe.”<sup>5</sup>

Both the uprising and its subsequent suppression aroused significant controversy in Britain. John Russell’s Liberal government created the aforementioned royal commission of inquiry, which, beginning in January 1866, interviewed 730 witnesses over a period of three months, and produced a forty-one-page report accompanied by an 1,162-page evidentiary appendix.<sup>6</sup> But its findings hardly calmed debate on the matter, for even as the report criticized the suppression’s violence, it declined to condemn the use of martial law in principle.<sup>7</sup> The Jamaica Committee, a group of parliamentarians and public intellectuals chaired initially by Charles Buxton and later by John Stuart Mill, led a campaign seeking further redress, eventually arguing that Eyre himself should stand trial in England. In response, an Eyre Defense Committee formed with its own set of prominent intellectuals, including Thomas Carlyle, John Ruskin, and the Earl of Shrewsbury.<sup>8</sup>

These events—the Morant Bay rebellion and subsequent “Governor Eyre controversy”—feature prominently in scholarship on Britain and Jamaica, and on the British Empire more broadly. Historians have carefully reconstructed a narrative record of the uprising and shown that it was planned with deliberate political aims, as a “rebellion” rather than a “riot.”<sup>9</sup> In addition,

<sup>1</sup> Report of the Jamaica Royal Commission (hereafter JRC), U.K. Parliamentary Papers (hereafter P.P.), 1866, xxx (C.3683, 3683-1), I, 16; Thomas C. Holt, *The Problem of Freedom: Race, Labor, and Politics in Jamaica and Britain, 1832-1938* (Baltimore: Johns Hopkins University Press, 1992), 299; and Gad Heuman, *“The Killing Time”: The Morant Bay Rebellion in Jamaica* (Knoxville: University of Tennessee Press, 1994), 3–30.

<sup>2</sup> Eyre to Cardwell, October 20, 1865, “Papers Relating to the Disturbances in Jamaica,” P.P., 1866, li (C.3594), at 7.

<sup>3</sup> JRC, I, 25.

<sup>4</sup> *Ibid.*, 40.

<sup>5</sup> Edward Bean Underhill, *The Tragedy of Morant Bay: A Narrative of the Disturbances in the Island of Jamaica in 1865* (London: Alexander & Shephard, 1895), 51.

<sup>6</sup> JRC, I-II.

<sup>7</sup> *Ibid.*, I, 18.

<sup>8</sup> Bruce L. Kinzer, Ann P. Robson, and John M. Robson, *A Moralist in and out of Parliament: John Stuart Mill at Westminster, 1865-1868* (Toronto: University of Toronto Press, 1992), 206.

<sup>9</sup> Don Robotham, *“The Notorious Riot”: The Socio-Economic and Political Bases of Paul Bogle’s Revolt*, (Mona: University of the West Indies, 1981); Holt, *The Problem of Freedom*, 262–309; and in particular, Heuman, *The Killing Time*.

many have seen Morant Bay as a transformative crisis of empire. Two themes garner particular attention. First, scholars have argued that Morant Bay was a watershed, alongside the Indian rebellion of 1857, in a turn from race to racism: in the hardening of British attitudes toward non-European peoples under imperial rule.<sup>10</sup> Second and focused more squarely on Eyre, scholars have analyzed the wide-ranging debate that the controversy prompted around the nature of British justice.<sup>11</sup> Within this second vein, legal historians have done much to elucidate both British debates over the scope of martial law and the extent to which martial law exposes basic tensions within modern legal theory (in particular, between sovereignty and the rule of law).<sup>12</sup>

This article presents a different interpretation of the political significance of Morant Bay and the legal debate that the scandal occasioned. Far from rejecting the prior scholarship just outlined, my aim is to illuminate a complementary perspective. This perspective concerns how investigating the controversy reshaped the political meaning of the event. In this regard, the article speaks to scholarship on scandal and legitimation, and on royal commissions of inquiry and their function in empire.<sup>13</sup> Such work has tended to treat royal commissions and other formal investigations into colonial violence less as empirical evidence and more as subjects for historical analysis. As Radhika Mongia has shown, the effect of official inquiry was frequently to produce, not simply to discover: to give shape and thereby meaning to complex, distant phenomena.<sup>14</sup>

<sup>10</sup> Catherine Hall, *Civilising Subjects: Metropole and Colony in the English Imagination, 1830-1867* (Chicago: University of Chicago Press, 2002); and Holt, *The Problem of Freedom*. Relatedly, Karuna Mantena, "The Crisis of Liberal Imperialism," in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2007), 113-35; and Thomas R. Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 2008).

<sup>11</sup> Bernard Semmel, *The Governor Eyre Controversy* (London: MacGibbon & Kee, 1962); Geoffrey Dutton, *The Hero as Murderer: The Life of Edward John Eyre, Australian Explorer and Governor of Jamaica, 1815-1901* (London: Collins, 1967); Catherine Hall, "The Economy of Intellectual Prestige: Thomas Carlyle, John Stuart Mill, and the Case of Governor Eyre," *Labor/Le Travail* 22 (1989): 167-96; and R.W. Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law* (Oxford: Oxford University Press, 2005).

<sup>12</sup> Kostal, *A Jurisprudence of Power*; and Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003).

<sup>13</sup> On the former, Nicholas B. Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge, MA: Belknap, 2006); James Epstein, *Scandal of Colonial Rule: Power and Subversion in the British Atlantic during the Age of Revolution* (Cambridge: Cambridge University Press, 2012); and Priya Satia, *Time's Monster: How History Makes History* (Cambridge, MA: Belknap, 2020). On the latter, Zoë Laidlaw, "Investigating Empire: Humanitarians, Reform and the Commission of Eastern Inquiry," *Journal of Imperial and Commonwealth History* 40 (2012): 749-68; Madhavi Kale, *Fragments of Empire: Capital, Slavery, and Indian Indentured Labor in the British Caribbean* (Philadelphia: University of Pennsylvania Press, 1998), 66-87; Radhika V. Mongia, "Impartial Regimes of Truth: Indentured Indian Labour and the Status of the Inquiry," *Cultural Studies* 18 (2004): 749-68; Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800-1850* (Cambridge, MA: Harvard University Press, 2016), 56-84; and Stephen Doherty, Lisa Ford, Kirsten McKenzie, Naomi Parkinson, David Roberts, Paul Halliday, Zoe Laidlaw, Alan Lester, and Philip Stern, "Inquiring into the Corpus of Empire," *Journal of World History* 32 (2021): 219-40.

<sup>14</sup> Mongia, "Impartial Regimes of Truth."

Like many legal proceedings, commissions of inquiry defined sets of legally recognizable facts. Structured by principles of relevance and proximity, these facts differed from the broader range of socio-historical facts, let alone subjective experiences. This was particularly the case with the Eyre controversy, which prompted not only a royal commission of inquiry but also multiple criminal prosecutions in England. These proceedings had not only the power to inflict or withhold punishment, but also “the capacity to exclude or dominate competing ways of understanding” the events themselves.<sup>15</sup>

My argument, then, is that the process of investigating Morant Bay gradually shifted attention away from the social and economic conditions that underlay the rebellion. Legal inquiry, in this context, produced a kind of translation. This shift was discursive and “moral,” in the dual sense of justice and plot. Understood in its own terms, the rebellion challenged the practice of colonial rule in Jamaica. Those who participated did so out of deep-seated dissatisfaction with endemic poverty, high levels of taxation, and a marked lack of political representation. When advocates in Britain defended the rights of black Jamaicans against arbitrary punishment and martial law, they swept aside these original claims. As Priyamvada Gopal has argued, Morant Bay should not be read “in isolation from the figure of the rebel who incite[d] it in the first place.”<sup>16</sup> In line with that injunction, this article reads the uprising as a systemic critique of colonial rule while arguing that the scandal and specific forms of legal inquiry that followed subsequently hid such critique from view. Through investigation, the controversy’s moral center moved from protest to martial law. As a result, what began as a protest against an unjust colonial order transformed, in the course of being addressed by British legal proceedings and arguments, into a justification for further and more centralized imperial rule.

### **Morant Bay as Systemic Critique**

To develop the first part of this argument—that Morant Bay reflected grievances concerning poverty and colonial governance, and that some contemporary observers understood the event in these terms—I will rely initially on the writing of Edward Underhill, the president of the Baptist Missionary Society during the 1860s. Underhill’s perspective is useful for two reasons. First, his proximity to the collective voicing of local critique makes him an important source for recovering political and socioeconomic perspectives that motivated the rebellion’s participants. In early January 1865, Underhill sent a report critical of Eyre and the local government’s post-emancipation policy to the colonial secretary in London.<sup>17</sup> Following the report’s publication, a series of public gatherings dubbed “Underhill meetings” took place across the colony

<sup>15</sup> Paul W. Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago: University of Chicago Press, 1999), 66.

<sup>16</sup> Priyamvada Gopal, *Insurgent Empire: Anticolonial Resistance and British Dissent* (London: Verso, 2020), 126.

<sup>17</sup> Underhill to Cardwell, January 5, 1865, P.P., “Correspondence Relative to the Affairs of Jamaica,” 1866, li (C.3595), 1–3.

as a wide range of Jamaicans debated Underhill's charges. Key figures like Bogle attended, and Eyre later blamed Underhill for inciting unrest.<sup>18</sup> Underhill's knowledge of the local concerns animating the uprising were thus considerable; while he hardly spoke for the rebellion, his views stood at the center of the popular political mobilization that preceded its outbreak.

Second, Underhill's writing illustrates the range of interpretive possibilities among British observers of the controversy, many of whom described the event in strikingly different terms. The actual (not just hypothetical) articulation of a systemic critique of Jamaican colonial governance is crucial, as a starting point, to the argument that legal inquiry subsequently narrowed the bounds of such interpretive possibility. With this in mind, Underhill does not figure here as an objective or impartial observer; on the contrary, his consistently critical viewpoint, which addressed local economic and political issues in assessing Morant Bay, makes him a vital source.

In January 1865, Underhill sent the aforementioned letter of protest to the colonial secretary, Edward Cardwell. The letter distilled an analysis that Underhill had begun to develop two years earlier in a highly critical book about worsening living conditions for black Jamaicans.<sup>19</sup> Both documents advanced a similar set of observations, which Underhill ultimately saw as the causes of the uprising. In short, Underhill sought to alert the Colonial Office to "the sufferings of [Jamaica's] coloured population"; that is, to poverty and, increasingly, hunger.<sup>20</sup> Such suffering followed mismanagement by Eyre and the local assembly, Underhill argued, whose restrictive franchise prevented the vast majority of island's population from voting. In his view, "unwisdom (to use the gentlest term) ... ha[d] governed Jamaica since emancipation."<sup>21</sup>

Underhill was not a revolutionary, but his criticisms were systemic and he consistently linked poverty and popular resentment to the question of political power. As he wrote in subsequent correspondence, "sectional interests" had ruled the island, with two key results.<sup>22</sup> First, the government's refusal to support alternative economic development apart from the sugar industry had led to rising unemployment.<sup>23</sup> Second, the highly regressive system of taxation put in place after abolition artificially inflated the costs of basic goods to the detriment of working people.<sup>24</sup> These were the causes of deepening poverty, Underhill argued, and neither was inevitable. For Underhill, a concentration of political power and corresponding lack of political rights underlay misrule. "[T]he great mass of the people are not represented," he noted, given a

<sup>18</sup> Eyre to Cardwell, October 20, 1865, P.P., 1866, li (C.3594), at 7.

<sup>19</sup> Edward Bean Underhill, *The West Indies: Their Social and Religious Condition* (London: Jackson, Walford and Hodder, 1862).

<sup>20</sup> Underhill to Cardwell, January 5, 1865, P.P., 1866, li (C.3595), at 2.

<sup>21</sup> *Ibid.*

<sup>22</sup> Underhill to Cardwell, October 9, 1865, P.P., 1866, li (C.3595), at 275.

<sup>23</sup> *Ibid.*; Underhill to Cardwell, January 5, 1865, P.P., 1866, li (C.3595), at 2 (arguing that export production should continue to undergird Jamaica's economy, but that freedpeople should form associations to produce a wide range of export crops in larger quantities and that the colony should alter its tax code to help make such production competitive).

<sup>24</sup> Underhill to Cardwell, January 5, 1865, P.P., 1866, li (C.3595), 1.

“franchise so arranged as to exclude from the privilege the very numerous class of small freeholders.”<sup>25</sup> By his estimate, only two of the 221 laws that the Jamaican assembly had enacted between 1857 and 1864 had “for their direct object the benefit of the labouring population.”<sup>26</sup> Socioeconomic conditions and political rights were thus closely linked in Underhill’s analysis. “I shall say nothing,” he wrote rhetorically, “of the course taken by the Jamaica Legislature; of their abortive Immigration Bills; of their unjust taxation of the coloured population; of their refusal of just tribunals; of their denial of political rights to the emancipated negroes.”<sup>27</sup>

Throughout, Underhill placed significant emphasis on the rising incidence of petty crime. While others viewed criminal behavior as evidence of moral decay, Underhill sought to illuminate social determinants. The “alarming increase of crime, chiefly of larceny and petty theft,” he argued, followed logically from “the extreme poverty of the people,” not from inherent indecency.<sup>28</sup> As we saw, Underhill attributed this poverty to colonial misrule. His search for root causes laid the blame on colonial policies that had, in his view, impoverished working people. Thus in concluding, Underhill called for “a searching inquiry into the legislation of the island since emancipation—its taxation, its economical and material condition.” Such an inquiry would necessitate structural change; it would “go far to bring to light the causes of the existing evils, and, by convincing the ruling class of the mistakes of the past, lead to their removal.”<sup>29</sup> For Underhill, then, the scandal preceded Morant Bay. Poverty, mistreatment, colonial mismanagement—socioeconomic causes of discontent revealed what Nicholas Dirks has in another context called the “scandal of empire.”<sup>30</sup>

There is evidence that Jamaican participants in the rebellion saw the event in similar terms. To start, the spring and summer of 1865 witnessed the assertion of a highly critical popular politics voiced at Underhill meetings held across the island. The origin of these meetings was Eyre’s failed attempt to circulate and refute Underhill’s accusations. Early meetings held under official sanction (and chaired by parish custodes) featured speakers from a “cross-section of Jamaican society,” including black laborers, missionaries, journalists, merchants, and planters.<sup>31</sup> At subsequent meetings, black leaders took on a defining role. They founded the “Underhill Convention,” a standing organization that set up local branches and arranged public meetings in Kingston and nine separate parishes.<sup>32</sup> As Mimi Sheller has shown, George William

<sup>25</sup> Underhill to Cardwell, October 9, 1865, P.P., 1866, li (C.3595), 276.

<sup>26</sup> *Ibid.*

<sup>27</sup> Underhill to Cardwell, January 5, 1865, P.P., 1866, li (C.3595), 2.

<sup>28</sup> *Ibid.*, 1.

<sup>29</sup> *Ibid.*, 2.

<sup>30</sup> Dirks, *Scandal of Empire*.

<sup>31</sup> Jake Christopher Richards, “Political Culture in Jamaica Before Anticolonial Nationalism,” *History Compass* 15 (2017), 2. On multiracial alliances in this context, see also Mimi Sheller, “Complicating Jamaica’s Morant Bay Rebellion: Jewish Radicalism, Asian Indenture, and Multi-Ethnic Histories of 1865,” *Cultural Dynamics* 31 (2019): 200–223.

<sup>32</sup> Heuman, *The Killing Time*, 51; and Mimi Sheller, *Democracy After Slavery: Black Publics and Peasant Radicalism in Haiti and Jamaica* (Gainesville: University Press of Florida, 2000), 190–91.

Gordon, who was executed under martial law following the rebellion, anchored the network of activists who participated in the convention.<sup>33</sup> While popular protest was not unprecedented, Underhill meetings marked a forceful outburst of political self-assertion by a black public that remained largely excluded from the colony's formal political process.<sup>34</sup>

Like Underhill's letter, speeches made during the Underhill meetings emphasized rising levels of poverty and articulated a structural critique of colonial governance. The Reverend Edwin Palmer, a black Baptist pastor who helped found the Underhill Convention in April 1865, argued that the "people were poor and destitute," that planters had often "robbed them of their wages," and that the local government was "oppressive."<sup>35</sup> Speakers at the Underhill meeting held in Palmer's church in Kingston decried the "heavy burden of taxation" imposed by the unrepresentative Jamaican assembly, which they blamed for exacerbating the material deprivation felt by parts of the population.<sup>36</sup> Connecting economic grievances to the question of political rights, the meeting called for the black population to "stand up as men and seek to enjoy their rights and privileges."<sup>37</sup> Beyond Kingston, other meetings similarly focused on "questions of land, rent and fair wages," and developed "charges of political corruption, injustice and social oppression."<sup>38</sup>

In assessing popular grievances against "colonial" rule, it is important to pause to consider the structure of Jamaica's local government. From 1662, Jamaica had a bicameral legislature that was, as Bernard Semmel aptly put it, "representative" but "far from democratic."<sup>39</sup> The elective forty-seven-member House of Assembly (the lower but more important body within this legislature) had significant authority, including the sole authority to originate legislation and appropriate government funding.<sup>40</sup> Given these powers, periodic conflicts took place between the assembly and the colony's appointed governor, who was ultimately responsible to the Colonial Office and home government in London. These conflicts intensified during the early era of emancipation, as London forced the colony to accept momentous change (most notably, abolition) without wresting political control from the assembly.<sup>41</sup> Both the governor and Colonial Office

<sup>33</sup> Sheller, *Democracy After Slavery*, 212–15.

<sup>34</sup> Abigail B. Bakan, *Ideology and Class Conflict in Jamaica: The Politics of Rebellion* (Montreal: McGill-Queen's University Press, 1990), 76; and Heuman, *The Killing Time*, 49.

<sup>35</sup> Quoted in Heuman, *The Killing Time*, 52. On Palmer, see also Sheller, *Democracy After Slavery*, 191.

<sup>36</sup> Underhill, *The Tragedy of Morant Bay*, 18 (quoting an unnamed reporter's summary transcription).

<sup>37</sup> *Ibid.*

<sup>38</sup> Sheller, *Democracy After Slavery*, 203, 207. See also Gopal, *Insurgent Empire*, 100–107.

<sup>39</sup> Semmel, *Governor Eyre Controversy*, 34.

<sup>40</sup> Douglas Hall, *Free Jamaica 1838–1865: An Economic History* (New Haven: Yale University Press, 1959), 2–3; Edward Brathwaite, *The Development of Creole Society in Jamaica 1770–1820* (Oxford: Clarendon, 1971), 9–10; and William A. Green, *British Slave Emancipation: The Sugar Colonies and the Great Experiment 1830–1865* (Oxford: Clarendon, 1976), 65–68.

<sup>41</sup> Philip D. Curtin, *Two Jamaicas: The Role of Ideas in a Tropical Colony 1830–1865* (New York: Atheneum, 1970), 96–98; Hall, *Free Jamaica*, 4–5; Gad J. Heuman, *Between Black and White: Race, Politics, and the Free Coloreds in Jamaica, 1792–1865* (Westport, CT: Greenwood Press, 1981), 108–11.

could and did disallow legislation passed by the assembly, but in 1839, Parliament backed away from drastically reforming Jamaica's constitution.<sup>42</sup>

Jamaica's local government was thus in certain respects fractured. By the 1860s, some opposition to traditional planter rule existed within the assembly, chiefly among "colored" and Jewish delegates whose urban and mercantile interests differed in part from those of the rural and absentee planter class.<sup>43</sup> Meanwhile, political disputes between the appointed governor and elected assembly persisted. In 1862, the assembly attempted to censure Eyre following a corruption scandal. In turn, Eyre prorogued the assembly when it refused to fund the government.<sup>44</sup> Nonetheless, the popular protest that underlay the Morant Bay rebellion tended not to emphasize tensions within the government. This reflected neither blindness nor misunderstanding, but rather the fact that conflict between the governor and the assembly centered on questions of political control at a time when the great majority of the population remained excluded from the formal political process. With respect to the issues of fundamental importance to protesters—taxation, labor, punishment, and poverty—the governor and assembly were far less divided. Both broadly supported the state's assumption of expanded policing powers during and after apprenticeship.<sup>45</sup> Neither sought to promote alternative agricultural development or disturb the centrality of sugar in Jamaica's export economy.<sup>46</sup> The vestries that collected taxes and oversaw local administration were either appointed or elected according to the same narrow franchise that governed the assembly.

In attacking colonial institutions, protestors thus took aim at both the governor and the assembly, as well as local officials and appointed magistrates.<sup>47</sup> "Plebeian publics" did, however, distinguish between local and metropolitan authority.<sup>48</sup> Indeed, participants in the Underhill meetings frequently claimed rights on the basis of imperial subjecthood, appealing directly to the Queen and imperial government as against local, colonial rule. Such language (and the notion of the loyal, rights-bearing subject) had featured prominently in anti-slavery demands fashioned before abolition.<sup>49</sup> Here, in the post-emancipation period, the Underhill meetings synthesized an insurgent moral economy with a

<sup>42</sup> In 1839, Melbourne's coalition government fell following a failed proposal to suspend Jamaica's constitution. Curtin, *Two Jamaicas*, 97; Green, *British Slave Emancipation*, 90, 354–57.

<sup>43</sup> This opposition is referred to as the "town party," in contrast to the planter-dominated "country party," although neither was a formal political party in the modern sense. Heuman, *Between Black and White*, 97–188.

<sup>44</sup> Semmel, *Governor Eyre Controversy*, 35–36; and Heuman, *Between Black and White*, 176–78.

<sup>45</sup> Diana Paton, *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780–1870* (Durham, NC: Duke University Press, 2004), 19–82.

<sup>46</sup> Hall, *Free Jamaica*, 8; and Holt, *The Problem of Freedom*, 181–213, 174–89. On town party coalitions and the extent to which they did and did not challenge planter hegemony, see Heuman, *Between Black and White*, 117–88.

<sup>47</sup> In St Thomas-in-the-East, conflict within the vestry and frustration aimed at the appointed custos and local magistrates played an important role in the outbreak of hostilities. See Heuman, *Killing Time*, 63–79.

<sup>48</sup> The phrase "plebeian publics" comes from Sheller, *Democracy After Slavery*, 145–73.

<sup>49</sup> See, for example, Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: University of North Carolina Press, 2006), 218–40.

long-standing discursive repertoire of reform.<sup>50</sup> Thus petitioners affirmed their status as “Her Majesty’s loyal subjects,” and called for “protection” from the crown.<sup>51</sup> Yet in so doing, they directly challenged the political economy of emancipation that imperial power had shaped. Such confrontation manifested most clearly in responses to the “Queen’s Advice,” a dispatch drafted by the Colonial Office and circulated in Jamaica by Eyre. The “Queen’s Advice” rejected Underhill’s assessment of the colony’s impoverished state, affirmed the imperative of wage labor, and argued that working Jamaicans had suffered no worse than working classes elsewhere.<sup>52</sup> In response, those involved in the Underhill Convention questioned the reality of post-slavery freedom, arguing that colonial policy (concerning land, taxation, and the franchise) had kept them in bondage.<sup>53</sup>

The salient point is that even when the Underhill meetings appealed to notions of imperial protection, they articulated a systemic critique of colonial rule. Like Underhill’s own writing, the meetings blamed post-emancipation policy for the island’s social ills. Gordon’s newspaper, *The Watchman and People’s Free Press*, called on the “Starving people of [the parish of] St Ann’s” to “come forth and protest against the unjust representations made against [them] by Mr Governor Eyre.”<sup>54</sup> That basic representation was that the people were themselves to blame.<sup>55</sup> In contrast, the convention argued that unjust policy had circumscribed the meaning of post-slavery freedom and impoverished the people. In the month before the outbreak of the rebellion, speeches made in Paul Bogle’s church in Stony Gut promoted similar themes; in one, James McLaren, a 22-year-old Native Baptist who was also later executed, declared: “I am still a slave by working from days to days. I cannot get money to feed my family, and I working at Coley estate for 35 chains for 1 shilling.”<sup>56</sup>

Historians have done much to excavate the socioeconomic conditions in which these claims were articulated. The fall of sugar prices following Britain’s repeal of preferential tariffs in 1846 put particular pressure on Jamaica’s plantation-based economy. Among other effects, planters lowered wages, which provoked resentment and resistance from the 1840s onward.<sup>57</sup>

<sup>50</sup> In *Insurgent Empire*, Gopal uses the term “insurgent” to refer to resistance not simply against but within a discourse of imperial control, and that usage is particularly apt in this context.

<sup>51</sup> JRC, I, 14 (quoting a petition signed by Paul Bogle and nineteen others on October 10, 1865). See also Gopal, *Insurgent Empire*, 103; and Sheller, *Democracy After Slavery*, 186–87.

<sup>52</sup> Sheller, *Democracy After Slavery*, 193.

<sup>53</sup> Gopal, *Insurgent Empire*, 105.

<sup>54</sup> Quoted in Heuman, *The Killing Time*, 57. On the *Watchman*’s reporting related to the Underhill meetings, see also Sheller, *Democracy After Slavery*, 191–92. On similarly critical reporting by Robert Alexander Johnson, a former *Watchman* editor, see Stephen C. Russell, “Slavery Dies Hard: A Radical Perspective on the Morant Bay Rebellion in Jamaica,” *Slavery & Abolition* 43 (2022): 185–204.

<sup>55</sup> Eyre to Cardwell, March 2, 1865; and Eyre to Cardwell, April 19, 1865, P.P., 1866, li (C.3595), 7, 29–34, esp. 30.

<sup>56</sup> JRC, II, 165. McLaren’s evocative speech has received substantial attention in the secondary literature. See Holt, *The Problem of Freedom*, 300–301; Sheller, *Democracy After Slavery*, 198–200; and Gopal, *Insurgent Empire*, 106–107.

<sup>57</sup> Robotham, “Notorious Riot,” 49–52. Robotham estimates that wages declined by roughly 35% between 1846 and 1865. As he explains, planters reduced wages both directly and indirectly, by withholding or docking pay, and by enlarging the “tasks” by which wages were calculated.

During the same period, the assembly shifted the colony's tax burden from plantation owners to the general population, the majority of which had once been enslaved. It did this by increasing import duties on basic goods. Between 1840 and 1865, import duties on herring, salt fish, and mackerel, "main staples of the working classes," rose by 166, 366, and 433% respectively.<sup>58</sup> Import duties on clothing increased by 1,150%, while taxes on plantation supplies and luxury goods decreased.<sup>59</sup> This was the context in which Underhill, Gordon, and others warned of hunger, a context in which wages fell and the cost of living rose. More narrowly, the United States Civil War increased the price of imported goods in 1865, just as an unusually severe draught damaged local food production.<sup>60</sup> Hunger and malnutrition resulted. Extensive reporting carried out by the Jamaica Baptist Union following Underhill's letter found that many were in "a starving condition."<sup>61</sup>

Persistent attempts to restrict black voting rights are similarly relevant in understanding the popular grievances articulated during the Underhill movement. An 1858 voting law imposed a 10 ½ shilling registration fee on voters in an attempt to disenfranchise black landholders who increasingly met former property qualifications.<sup>62</sup> By 1865, the number of registered voters had been reduced to 1,903, or "just under 2 percent of the adult male population."<sup>63</sup> In this context, economic demands and political rights were fundamentally intertwined; controlled by a small minority of the population, the assembly enacted economic policy that favored large plantations at the expense of the formerly enslaved majority. Thomas Holt and others have described a similarly structural bias within the Jamaican judicial system.<sup>64</sup> In these respects, historians have substantiated the popular complaints that appeared so frequently preceding the rebellion. It was certainly no coincidence that Bogle attacked a courthouse, or that the focal point of the rebellion's beginning was a contested arrest and hearing.

In 1895, thirty years after the rebellion, Underhill published *The Tragedy of Morant Bay*, an extended account of the origins and aftermath of the event. Like John Stuart Mill and other prominent critics of Eyre's use of martial law, Underhill devoted considerable attention to arbitrary and excessive punishments. Unlike Mill, however, Underhill continued to emphasize the role of poverty and misrule in producing the rebellion. The object of his critique was social, legal, and political reform, not just the use of martial law. A "venal and corrupt" legislature had oppressed the black population with "intolerant laws." "The barbarities of a slave code," he argued, "were attempted to be perpetuated among a free people."<sup>65</sup> As in his 1865 letter,

<sup>58</sup> Holt, *The Problem of Freedom*, 275.

<sup>59</sup> *Ibid.*; and Robotham, "Notorious Riot," 42–43.

<sup>60</sup> Heuman, *The Killing Time*, 44.

<sup>61</sup> Hall, *Civilising Subjects*, 245 (quoting "Report of the Baptist Ministers," in Eyre to Cardwell, May 6, 1865, P.P., 1866, li [C.3595], 145–77).

<sup>62</sup> Sheller, *Democracy After Slavery*, 185–86; and Robotham, "Notorious Riot," 38–39.

<sup>63</sup> Holt, *The Problem of Freedom*, 274.

<sup>64</sup> *Ibid.*, 288; Kostal, *A Jurisprudence of Power*, 96–98; and Clinton A. Hutton, *Colour for Colour, Skin for Skin: Marching with the Ancestral Spirits into War Oh at Morant Bay* (Kingston: Ian Randle, 2015), 63–76.

<sup>65</sup> Underhill, *The Tragedy of Morant Bay*, 7.

Underhill condemned Jamaica's regressive tax code, arguing that "£300,000 had been added to the burdens of an impoverished people, much of which was spent, not for the public benefit, but for the profit of private individuals."<sup>66</sup> Thus for Underhill, Morant Bay revealed a need for political and socioeconomic change. Although Bogle differed from Underhill in advocating violence, he had advanced a similar line of critique, emphasizing wages, taxes, poverty, and plantocracy.<sup>67</sup> Yet by 1895, British public opinion had largely dismissed Underhill's socio-political analysis.<sup>68</sup>

### Inquiry, Recognition, and Exclusion

Indeed, as the scandal of Morant Bay advanced, this kind of socio-political critique faded from view. We see this first in the workings of the royal commission of inquiry. Formal investigation not only aired, it also redefined the scandal at issue. The commission excluded evidence relating to the long-term social and political condition of the colony from its investigation into the rebellion's origins. In so doing, it marginalized the concerns of the rebellion's black participants and began to reshape the political meaning of the event.

To understand this process, it is helpful first to consider how the commission was established. As news of the rebellion reached London, Lord Russell's cabinet reacted with dismay. Notably, Russell, William Gladstone, and Cardwell, each of whom helped institute the royal commission, expressed particular concern regarding Eyre's violent reaction. Russell publicly stated that the affair had "affected the government with very great pain."<sup>69</sup> Gladstone privately lamented the number of reported deaths and doubted the necessity of martial law.<sup>70</sup> Overall, as R.W. Kostal has argued, the cabinet viewed the event as "a grievous blow to England's international reputation as a humane nation governed by law."<sup>71</sup> By early December, they had decided to suspend Eyre from his governorship and launch a public investigation.

Commissioners were appointed shortly thereafter. Sir Henry Storks, a Conservative former soldier and imperial administrator, was named chair. Two lawyers—Russell Gurney and John Blossett Maule—also served as commissioners. Gurney was a member of Parliament (MP), and both he and Maule were Tories. The quasi-legal character of the inquiry appeared as a sign of fairness amidst the growing public controversy; as one newspaper put it, the commission retained that "patient impartiality which belongs exclusively to professional lawyers."<sup>72</sup>

<sup>66</sup> *Ibid.*, 14.

<sup>67</sup> JRC, I, 14 (summarizing Bogle's grievances, including "nonpayment of sufficient wages and the undue imposition of taxes."); Hutton, *Colour for Colour*, 99–119 (interpreting Bogle's views while reflecting on archival limitations that make direct quotation difficult).

<sup>68</sup> Indeed, Underhill was by 1895 an outlier; most British observers reached very different conclusions about the meaning of Morant Bay, as discussed in the following sections.

<sup>69</sup> Quoted in Kostal, *A Jurisprudence of Power*, 63.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, 56.

<sup>72</sup> *Saturday Review*, December 16, 1865, quoted in Kostal, *A Jurisprudence of Power*, 75.

Yet from the outset, the commission's mandate was unclear. Their official task was to perform a "full and impartial Inquiry" and to establish a factual record of disputed events. For the purpose, they received access to private colonial documents—Eyre's correspondence with Cardwell, for example—and authorization to "gather evidence" in Jamaica.<sup>73</sup> In addition, their mandate asked for "opinions" regarding the "grievous disturbances." In particular, it instructed the commissioners to address the question of martial law and examine the allegation that "excessive and unlawful severity has been used in the course of such suppression."<sup>74</sup> In broad terms, Conservatives and Liberals in Parliament interpreted these instructions differently. Some, like the Conservative leader Benjamin Disraeli, saw the commission as a symbolic tribunal, whose legal judgment would bring the controversy to a close. Others, in particular John Stuart Mill, viewed the commission as a fact-finding body akin to a grand jury, which would determine whether a substantial evidentiary basis for further legal action (and punishment) existed. The key point, then, is that the commission embarked under a dual mandate, tasked with determining "facts" and reporting "opinions." Yet this mandate remained ambiguous; MPs continued to debate its terms during and after the commission's investigation. In this context, the commission had substantial leeway in designing and executing its procedures.<sup>75</sup>

As debate continued, the commissioners limited the scope of their investigation with regard to the rebellion's origins. Important here was the fact that the nature of the commission's fact-finding mission had remained unspecified. The commission's mandate tasked it with investigating the "origin, nature, and circumstances of the said [Jamaican] disturbances."<sup>76</sup> But the commissioners construed this instruction narrowly. Discounting longer-term social and political factors, the commission focused instead on the events immediately preceding the courthouse riot. They explained this decision in the introduction to their report:

We were solicited to admit evidence with respect to a great variety of subjects, embracing almost the whole range of Island politics for several years past. The limitation, however, of the object of our Inquiry to the subject of the late disturbances in St. Thomas-in-the-East seemed to prescribe a natural limit to the range of the investigation. Accordingly we resolved, so far as we could, to confine ourselves to an examination of the causes which proximately and directly led to the disturbances.<sup>77</sup>

Perceived impracticality was part of this rationale; it was simply too complex for the commission to address "the whole range of Island politics." More

<sup>73</sup> "Commission under the Royal Sign Manual and Signet," December 30, 1865, JRC, I, 3.

<sup>74</sup> *Ibid.*

<sup>75</sup> Previous colonial commissions had similarly broad discretion in implementing their formal mandates. See Benton and Ford, *Rage for Order*, 71–73.

<sup>76</sup> JRC, I, 3.

<sup>77</sup> JRC, I, 9.

interesting were legal habits of mind arrayed around the common-law notion of proximate cause. Common lawyers frequently distinguish between proximate or material facts that count and attenuated chains of events that do not. Here, the notion of proximate cause served to delimit the commission's reconstruction of relevant facts to the exclusion of much of what Underhill found important.

So did a negative view of the island's black population. That too defined the boundaries of acceptable evidence narrowly. The commissioners viewed the black witnesses they interviewed as "uneducated peasants, speaking in accents strange to the ear, often in a phraseology of their own, with vague conceptions of number and time, unaccustomed to definiteness or accuracy of speech[.]"<sup>78</sup> Racial and linguistic difference rendered black testimony suspect, and on these grounds the commissioners deemed such testimony unreliable. In addition, the apparent failure of some interviewees to conform to the quasi-legal parameters of the inquiry cast further doubt on their capacity for rational thought. "Many of them," the commissioners reported, "misconceived the object of the Commission, and came to tell their tale of houses burnt or property lost, in the undisguised hope of obtaining compensation."<sup>79</sup> There are traces here of conflicting concepts of justice: of Jamaicans seeking redress not as punishment for Eyre but instead as compensation for property loss and wrongful death. But because such demands exceeded the technical remit of the commission, they appeared as further evidence of deficiency. The commissioners thus collected "[a] considerable body of evidence, especially in relation to the state of the Island." But after "sift[ing]," it proved, to them, "of but little value."<sup>80</sup> Again, the structure of the inquiry shaped the commission's reconstruction of the facts, separating relevant from irrelevant. It limited the inquiry to short-term "proximate" causes. It discounted, on a racialized basis, oral testimony regarding the socioeconomic state of the colony before the rebellion began. The joint effect was to exclude from consideration the social and political concerns—the scandal of colonial rule—with which we began.

When it came to formulating legal "opinions," meanwhile, the commission limited itself to the legitimacy of Eyre's use of martial law, excluding wider issues of colonial mismanagement. This decision made sense from a metropolitan standpoint; it was the allegation of legal injustice—the suspension of the rule of law—that had deeply troubled the home government. But it furthered the narrowing process of translation at the heart of my analysis. In judging the events, the commissioners credited Eyre with acting quickly to suppress a dangerous threat but faulted him for employing martial law overzealously. In so doing, the report defined the true issue—the "moral" of the story—as the strictly legal question of whether Eyre's use of martial law was justified, which meant whether Eyre's actions were consonant with Jamaican law and

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<sup>78</sup> JRC, I, 8.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid. For an insightful reading of these collected but unused testimonies, see Jenny M. Jemmot, "Surviving the Suppression: The Significance of Witnesses' Testimonies before the Jamaica Royal Commission of 1866," *Journal of Caribbean History* 50 (2016): 18–35.

precedent in the circumstances. All of this followed the structure of the inquiry more than the individual biases of the commissioners. In applying itself as a court-like body, the commission narrowed the scope of the controversy from broad questions of political, social, and economic “justice” to comparatively narrow questions of specifically legal “justice.”<sup>81</sup>

The key point, then, is that the commission disregarded long-term issues of poverty and governance in its official assessment of the uprising. As we have seen, this omission was the result of two factors. The first was contingent: the commissioners, who retained substantial discretion in specifying the commission’s investigative procedures, decided not to entertain evidence pertaining to the social and political context of the uprising. The second factor concerned the structure of the commission itself. The political issue that prompted the home government to create the commission was the scandal of martial law. In turn, the focus of the commission in apportioning blame fell almost entirely on questions related to Eyre’s use of martial law. Alternative forms of redress appeared irrelevant, even irrational, in light of this mission. So did the longer-term origins of the uprising itself.

### **Mill, Martial Law, and Legality**

The process of discursive transformation that began with the commission continued through Eyre’s trial at Queen’s Bench in June 1868. Many, including some of those who had campaigned for Eyre’s removal, thought that a trial was unnecessary. Of those pressing forward, John Stuart Mill was especially prominent. By the time the commission’s report was published, Russell had already removed Eyre from his post as governor. Charles Buxton, then the leader of the Jamaica Committee, thought that little more could be done. Mill, however, argued that Eyre should be brought to trial in England. Within the committee, Mill’s argument won out and he became chair when Buxton resigned. But with respect to the systemic critique voiced by Underhill and many others at the Underhill meetings, Mill’s impassioned writing on the scandal had the same effect as the royal commission. Mill homed in on the issue of martial law, drawing from the commission to argue that Eyre had exceeded his legal authority. In so doing, Mill abstracted the controversy from its original context, moving from Jamaica to the integrity of British justice in principle. As he argued against Eyre’s use of martial law, the question of colonial poverty, and of the Jamaica’s unrepresentative government, receded from view. An analysis of Mill’s advocacy is thus critical to my argument that formal inquiry altered the meaning of Morant Bay.

The shifting context of British politics in 1866 shaped Mill’s legal arguments. Soon after the royal commission published its report, Russell’s Liberal government fell and was replaced by a Conservative government led by the Earl of Derby and Benjamin Disraeli. With this change in power, it became clear that the government would not itself initiate further legal action concerning

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<sup>81</sup> See Judith N. Shklar, *Legalism* (Cambridge, MA: Harvard University Press, 1964), 111–23 (on legal justice as neutral adherence to rules).

the Eyre controversy. In July, Charles Buxton proposed a four-part resolution in the House of Commons in response to the commission's report. The first part symbolically condemned the excesses of the suppression but, in line with the commission, did not call for criminal punishment or material reparations. It passed with broad support, and the Commons "deplore[d] the excessive punishments which followed the suppression of the disturbances."<sup>82</sup> But MPs voted down the three remaining parts of the resolution. These had called for more expansive forms of redress: for criminal punishment for those responsible for excessive violence, for compensation for destroyed property, and for the abrogation of ongoing punishments imposed on Jamaicans accused of supporting the rebellion.<sup>83</sup>

In opposing these three propositions, the Conservative government firmly rejected the notion that Eyre should be prosecuted. Charles Adderley, the new under-secretary of state for the colonies, argued that the suppression was morally wrong but not illegal. This, according to Adderley, had been the chief conclusion of the commission, and since Eyre had already been removed, nothing further was required. Calling the commission the "one constituted tribunal," Adderley declared: "the government decline altogether to re-open the case."<sup>84</sup> Disraeli made a similar argument in Parliament earlier in July. Though morally reprehensible, Eyre's actions were perfectly legal, according to Disraeli, because they "took place during the existence of martial law" and "martial law supersedes ordinary law."<sup>85</sup> "Those who ask that further steps should be taken," Disraeli thus concluded, "seem to me to confuse errors of judgment with *malice prepense*," or with a premeditated desire to break the law.<sup>86</sup> The Earl of Carnarvon, now the colonial secretary, disagreed with Adderley as to the precise role of the commission but nonetheless concluded that Eyre should not stand trial.<sup>87</sup> Given the commission's findings, Eyre appeared to Carnarvon to be innocent of intentional wrongdoing. The possibility of bringing Eyre to trial for murder Carnarvon thus condemned as "preposterous" and "utterly repugnant to the common sense of Englishmen."<sup>88</sup> For each of these figures, the issue turned on a distinction between moral wrongs (and "errors of judgment") and specific legal wrongs, most notably the specific intention to exceed or abuse the colonial government's legal authority.

It is in this context that Mill's interventions should be understood, as arguments shaped by the opposition they faced. In any context of debate, speech acts are dialogic in this sense, as "move[s] in an argument."<sup>89</sup> This linguistic insight is especially important to legal argument, in which the framing of specific issues directly constrains the range of relevant claims that can be made.

<sup>82</sup> *Hansard*, 3rd ser., clxxxiv, col. 1763 (July 31, 1866).

<sup>83</sup> *Ibid.*, cols. 1763, 1839–40.

<sup>84</sup> *Ibid.*, col. 1786.

<sup>85</sup> *Hansard*, 3rd ser., clxxxiv, col. 1067 (July 19, 1866).

<sup>86</sup> *Ibid.*, col. 1069.

<sup>87</sup> *Hansard*, 3rd ser., clxxxiv, col. 1890 (August 2, 1866).

<sup>88</sup> *Ibid.*, col. 1894.

<sup>89</sup> Quentin Skinner, *Visions of Politics, I: Regarding Method* (Cambridge: Cambridge University Press, 2002), 115.

Here, the government's legal argument against further prosecution structured Mill's task. Why should Eyre stand trial in court? Why were his actions *illegal* as opposed to simply immoral? In answering, Mill like his adversaries emphasized the commission's legal findings, the functions of England's legal system, and the rule of law in principle. His most substantial speech on the matter reveals the crucial dynamic by which ongoing agitation for and against criminal prosecution shifted the terms of debate away from the question of poverty and representation in Jamaica, reshaping the meaning of the scandal.<sup>90</sup>

Mill began by endorsing the commission's findings, which "emphatically condemned a large portion of the proceedings," including "the floggings they pronounce to have been reckless," and "the burnings they pronounce wanton and cruel."<sup>91</sup> But then he went further, arguing that the crimes uncovered by the commission could only be addressed by a court of law:

[T]he lives of subjects of her Majesty have been wrongfully taken, and the persons of others wrongfully maltreated; and I maintain that when such things have been done, there is a *prima facie* demand for legal punishment, and that a court of criminal justice can alone determine whether such punishment has been merited, and if merited, what ought to be its amount. The taking of lives without justification, which in this case is an admitted fact, cannot be condoned by anything short of a criminal tribunal.<sup>92</sup>

Two features stand out in this analysis. First, Mill defended the rights of black Jamaicans in a particular way, as "the subjects of her Majesty." Invoking imperial subjecthood was strategic in context, and it reflected Mill's broader belief in imperial benevolence.<sup>93</sup> As we saw, it was also a tactic adopted by many of those who argued for reform at Underhill meetings while simultaneously affirming their loyalty to the crown. Still, Mill's forceful argument framed colonial violence as a breach of imperial protection. In so doing, it minimized, as a discursive matter, the anti-colonial impulse lurking within the rebellion. Martial law had wronged dutiful Jamaicans and impinged on the rights of imperial subjecthood. The perceived injustice of the colonial order was no longer at stake.

Second and very much related, Mill's argument turned attention toward specific legal wrongs committed under martial law and, more abstractly, toward the integrity of the legal system. Meeting the challenge posed by Disraeli, Carnarvon, and other ministers opposed to prosecution, Mill argued

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<sup>90</sup> In his autobiography, Mill referred to this speech as "probably...the best of my speeches in Parliament," a striking distinction given his simultaneous engagement with the issue of women's suffrage and the Second Reform Bill. *Collected Works of John Stuart Mill*, i, ed. John M. Robson and Jack Stillinger (Toronto: University of Toronto Press, 1981), 281. See also Stefan Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850-1930* (Oxford: Clarendon, 1991), 145.

<sup>91</sup> *Hansard*, 3rd ser., clxxxiv, col. 1799 (July 31, 1866).

<sup>92</sup> *Ibid.*

<sup>93</sup> Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2006), 138-50; and Satia, *Time's Monster*, 79-81.

that only “a court of criminal justice” could legitimately determine whether Eyre had broken the law. There was in the commission’s evidence a “*prima facie*” showing of criminal wrongdoing. In other words, in response to the law and morality distinction that had been drawn in Eyre’s defense, Mill highlighted provable violations of law that a court should adjudicate. In this way, too, Mill’s speech departed from Underhill’s systemic critique. In Mill’s account, the scandal’s victim was the integrity of British justice, and its perpetrator an illegal abuse of authority. Lost was the sense that unrepresentative colonial rule had, through its normal operation (not just its exceptional use of martial law) injured and unfairly treated the local population.

Influential scholarship has portrayed Mill as an exemplary liberal imperialist whose political theory both condoned and explicitly justified the exclusion of “primitive” colonial subjects from political rights.<sup>94</sup> But in this case, a racialized assessment of the capacity for rights of non-European subjects does not account for the selectiveness of Mill’s argument. Mill appears to have felt sympathy for the social and political difficulties facing the majority of black Jamaicans in the post-emancipation period. In a private letter written soon after the rebellion but before Mill became involved in the Eyre controversy, Mill suggested that “what had just taken place in Jamaica might be used as a very strong argument against leaving the freedmen to be legislated for by their former masters.”<sup>95</sup> As Kinzer, Robson, and Robson have argued, Mill saw a possible relationship between the uprising and “planter misgovernment and oppression.”<sup>96</sup> Fifteen years earlier, Mill famously defended the industriousness and moral standing of formerly enslaved black subjects against Thomas Carlyle’s well-known assertion that racial incapacity had rendered emancipation a failure.<sup>97</sup>

In light of this evidence, it is important to emphasize that my argument is not that Mill simply failed to notice the social context that fueled the uprising (or, more pointedly, that he purposefully discounted the notion that freedpeople should share in their own governance). Rather, it is that his attention shifted as he became more deeply involved in the scandal surrounding the use of martial law. This shift was not arbitrary; it followed the structure of a debate centered on *legal* wrongdoing and the possibility of a trial. Mill’s legal arguments were also political, but as he abstracted from criminal acts to broader ideals, his object of interest changed. As his speech continued, he

<sup>94</sup> See in particular Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999); and Pitts, *A Turn to Empire*.

<sup>95</sup> In the same letter, Mill predicted, fatefully, that the home government would suspend the Jamaican assembly’s powers and “make a clean sweep” of the colony’s local institutions. Mill to Hazard, November 15, 1865, in *Collected Works of John Stuart Mill*, xvi, ed. Francis E. Mineka and Dwight N. Lindley (Toronto: University of Toronto Press, 1972), 1117–18; and Kinzer, Robson, and Robson, *A Moralists*, 186.

<sup>96</sup> Kinzer, Robson, and Robson, *A Moralists*, 187. See also Jake Subryan Richards, “Political Thought and the Emotion of Shame: John Stuart Mill and the Jamaica Committee during the Governor Eyre Controversy,” *Modern Intellectual History* (2022), 1–21. doi:10.1017/S1479244322000154.

<sup>97</sup> J.S. Mill, “The Negro Question,” *Fraser’s Magazine* 41 (1850): 25–31; and Hall, *Civilising Subjects*, 347–53.

turned from the specifics of the uprising to tyranny in the abstract. Martial law was, in his view, not just a threat to particular colonial subjects or even to the imperial order. It was a threat to justice generally, in the empire and, crucially, in Britain. Moving beyond Jamaica and Eyre, Mill framed the issue as the general threat of arbitrary power: “[I]f officers of the Government are to take the lives of the Queen’s subjects improperly—as has been confessedly done in this case—without being called to a judicial account, and having the excuses they make for it sifted and adjudicated by the tribunal in that case provided, we are giving ourselves up altogether the principle of government by law, and resigning ourselves to arbitrary power.”<sup>98</sup>

Crucial to Mill’s argument was the notion that impunity for unjust violence harms all members of society, not just those whose lives are taken, because it shatters law’s power to provide general security. This meant that the Eyre controversy mattered to Britons; that those at home had a shared interest in pursuing a trial. The final passage of his speech developed this point further: “When there is absolutely no guarantee against any extremity of tyrannical violence but the responsibility which can be afterwards exacted from the tyrant—then, sir, it is indeed indispensable that he who takes the lives of others under this discretion *should know that he risks his own.*”<sup>99</sup>

In emphasizing the general danger of tyranny—of rule without law—Mill echoed a set of prominent late-eighteenth-century arguments concerning colonial violence and misrule. Edmund Burke’s attack on Warren Hastings and the East India Company had similarly portrayed unrestrained colonial power as a threat to British liberty.<sup>100</sup> The abolitionist Granville Sharp had argued that slaveholding would corrupt English legal institutions.<sup>101</sup> The movement in Mill’s speech—from the specific case of Eyre to the more general problem of tyranny as a threat to law and society—reflected a similar pattern. This refocusing helps explain why Mill was so adamant about the case, which some contemporary allies viewed as a losing battle.<sup>102</sup> But like the royal commission, it also transformed the meaning of the scandal. Exploitation in Jamaica was now marginal. Mill’s language shifted attention from that specific context to abstract legal ideals and the extent to which their violation threatened metropolitan interests. The real question, as Mill later wrote, was “whether the British dependencies, and eventually, perhaps, Great Britain itself, were to be under the government of law, or of military licence.”<sup>103</sup> The trial concerned the integrity of British justice as a whole, not simply Morant Bay. “There was much more at stake,” Mill explained, “than only justice to the Negroes, imperative as was that consideration.”<sup>104</sup>

<sup>98</sup> *Hansard*, 3rd ser., clxxxiv, col. 1800 (July 31, 1866).

<sup>99</sup> *Ibid.*, col. 1804 (emphasis added).

<sup>100</sup> Dirks, *Scandal of Empire*, 87–131.

<sup>101</sup> Brown, *Moral Capital*, 93–101; and David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca, NY: Cornell University Press, 1975), 386–402.

<sup>102</sup> Kinzer, Robson, and Robson, *A Moralist*, 192–94.

<sup>103</sup> Mill, “Autobiography,” in *Collected Works*, i, 281.

<sup>104</sup> *Ibid.* See also Pitts, *A Turn to Empire*, 153.

Mill's "much more" lives on in contemporary discourse surrounding political necessity, particularly in the arena of international relations. The proposition is often true, but here the point is that it transforms. It moves us from specific contexts to abstract commitments. In Mill's language, the use of martial law in Jamaica came to *represent* something else—the threat posed by tyranny to the rule of law. Justice to freedpeople in Jamaica remained "imperative" but not primary. It was now a flashpoint in a larger and more abstract controversy.

### **The Queen v. Eyre and Imperial Rule**

Mill succeeded in criminally charging Eyre, but not in securing a guilty verdict or punishment. In 1867 and 1868, the Jamaica Committee spearheaded three private criminal prosecutions, two against Eyre, and one against the subordinate officers who had carried out Gordon's execution. Because of their procedural complexity and the fact that Eyre prevailed in all three, much scholarship has dismissed the legal substance of these cases.<sup>105</sup> Yet as Kostal has shown, they sustained the Eyre scandal beyond the royal commission, becoming the loci of both legal and wider public debate on the nature of martial law.<sup>106</sup> For my purposes, the Jamaica Committee's unsuccessful prosecutions are important because they reveal a final measure of conceptual and moral transformation. Close analysis of the last of these prosecutions—*The Queen v. Eyre*—makes this clear. More specifically, it shows how the legal process further marginalized the socio-political causes of the rebellion and instead contributed to new justifications for the imposition of a stronger, more centralized form of imperial rule.

Proceedings began in May 1868. To lodge criminal charges against Eyre, the Committee's lawyers first had to present an indictment to a magistrate at the Bow Street Police Court. After lengthy proceedings involving an application for a writ of mandamus, the magistrate issued an arrest warrant for Eyre, who had returned to London to face charges.<sup>107</sup> The twenty-one-count indictment was then sent to Queen's Bench. To proceed to trial, however, the prosecution first had to convince a Middlesex grand jury that the existing evidence supported the charges in the indictment. On June 2, Justice Colin Blackburn, the presiding judge, delivered his "charge"—lengthy instructions on the law governing the case—to the jury. Because the jury ultimately rejected the indictment, Blackburn's charge was the final legal pronouncement in the case.

<sup>105</sup> Kostal, *A Jurisprudence of Power*, 463 (critiquing this tendency). The Jamaica Committee also pursued a civil proceeding, *Philips v. Eyre*, in 1868. On the procedural aspects of the Eyre prosecutions, see Kostal, *A Jurisprudence of Power*, 270, 372; and Peter Handford, "Edward John Eyre and the Conflict of Laws," *Melbourne University Law Review* 32 (2008): 822–60, 841–48.

<sup>106</sup> Kostal, *A Jurisprudence of Power*, 258–431.

<sup>107</sup> Eyre had previously avoided London and the jurisdiction of London courts in a purposeful strategy to defend himself in a rural county where unpaid magistrates and gentry-based juries were more likely to dismiss charges. That was exactly what happened when the Jamaica Committee initially tried to indict Eyre in Market Drayton, Shropshire, in 1867. See Kostal, *A Jurisprudence of Power*, 270–95.

Although not technically a decision, the charge engaged in lengthy legal analysis regarding the nature of martial law, the parameters of legal responsibility for colonial violence, and the legal relationship between Britain and the empire.

Like Mill, the proceedings in *The Queen v. Eyre* shifted the focus of debate away from the social context of the rebellion toward specifically legal questions concerning the scope of martial law. Neither the indictment nor Blackburn's charge commented on the social and economic conditions facing Jamaica's black population at the time of the uprising. This followed less from active bias than from the legal parameters of criminal responsibility. Then as now, the law punished specific criminal acts, not broad social phenomena. The indictment charged Eyre with having illegally employed martial law. As a result, the origins of the uprising were largely irrelevant to the legal questions posed by the indictment. What mattered, and what Blackburn discussed at length, was Eyre's legal authority to declare and use martial law. Meanwhile, as in Mill's speeches, the indictment figured those who suffered during the suppression as the Queen's subjects. As a formal matter, the injured party was the Queen, or as the indictment stated repeatedly, "the peace of our said Lady the Queen, her crown and dignity."<sup>108</sup> As a more substantive matter, the heart of the scandal, from the perspective of the case, was illegality itself: an alleged abuse of authority that had violated the rights of individual subjects and the Queen's authority as a whole. Gone was the critique of colonial rule apparent in Underhill's account of the rebellion's origins. In pursuing criminal charges, the Jamaica Committee made legal claims that affirmed the imperial order.

Jurisdictional authority to try Eyre in England came from the Colonial Governors Act, an act of Parliament that allowed for criminal offenses committed by colonial governors overseas to be prosecuted in Queen's Bench.<sup>109</sup> The indictment accused Eyre of two types of offenses. First, it claimed that Eyre's declaration of martial law was "illegal and oppressive," and was itself punishable under the act, as a "great perversion of public justice."<sup>110</sup> Similarly, the indictment accused Eyre of violating the law by extending martial law for thirty days; by allowing courts martial to mete out "cruel and unlawful punishments;" and by causing soldiers to beat, injure and destroy the property of "divers large numbers of the liege subjects of our said Lady the Queen."<sup>111</sup> Second, the indictment named a set of offenses related to the forced transportation of specific individuals from Kingston to districts where martial law was in effect, for purposes of summary punishment.<sup>112</sup> The most prominent of these individuals was George William Gordon, who was summarily tried and executed "in contravention of the laws then and there in force, and of the rules of natural justice."<sup>113</sup>

<sup>108</sup> Indictment, count 1, in W.F. Finlason, ed., *Report of the Case of The Queen v. Edward John Eyre* (London: Chapman and Hall, 1868).

<sup>109</sup> Charge to the Grand Jury, in *ibid.*, 54; 42 Geo. III, chap. 85 (1802). See also Kostal, *A Jurisprudence of Power*, 380; and Epstein, *Scandal of Colonial Rule*, 18.

<sup>110</sup> Indictment, count 1, in *Report of the Case of The Queen v. Edward John Eyre*.

<sup>111</sup> *Ibid.*, counts 2, 3, 21.

<sup>112</sup> *Ibid.*, counts 4–21.

<sup>113</sup> *Ibid.*, count 8.

Blackburn's instructions strongly suggested that the jury should reject the indictment. As he made clear, there was no doubt that Eyre had declared martial law and that the violent acts enumerated in the indictment had in fact occurred. The issue, however, was "whether, in doing these things, he did anything for which he is criminally responsible."<sup>114</sup> In two ways, Blackburn's legal analysis suggested that the answer was no. First, Blackburn counseled that responsibility depended on a finding of negligence and fashioned a negligence standard that privileged Eyre's reconstruction of the events. Eyre had a duty to suppress the insurrection; his actions were criminal only if they neglected or exceeded that duty "to such an extent as to amount to criminal negligence."<sup>115</sup> Drawing on *The King v. Pinney*, an 1832 decision at King's Bench concerning the purported failure of a Bristol justice of the peace to suppress a riot, Blackburn instructed the jury that the test of negligence was reasonableness under the circumstances. An official acted "reasonably," in this sense, when he did everything "in his power to suppress the riot that could reasonably be expected from a man of honesty and of ordinary prudence, firmness, and activity under the circumstances in which he was placed."<sup>116</sup> This standard Blackburn adapted and repeated: "ordinary firmness and moderation" was Eyre's duty and the standard by which his alleged excesses should be judged.<sup>117</sup> The apparent tension between the words "firmness" and "moderation" was intentional, because Blackburn thought that Eyre had to balance the dual responsibilities of suppressing the uprising and not violating common rights excessively.<sup>118</sup>

Like many common-law reasonableness standards, Blackburn's standard was "objective" in the legal sense. The question was not simply Eyre's honesty; even if Eyre had intended to fulfill his duty, he could be found guilty if his attempt to do so was deemed unreasonable. As Blackburn explained, "even if there was perfect innocence and honesty of intention, yet, if there was a failure of exercising that degree of calmness, moderation, and self-control, which a man might be expected reasonably to have, the Governor would be responsible for that."<sup>119</sup> Yet importantly, Blackburn stressed that Eyre's decisions should be appraised in light of his perceptions and beliefs at the time. The result was an increasingly "subjective" analysis of reasonableness. "[Y]ou will have to put yourselves in his position, to see with his eyes, and hear with his ears," Blackburn counseled the jury.<sup>120</sup> If they found that Eyre "thought there was a dangerous insurrection and conspiracy spreading throughout the island," and that "he believed" that Gordon was the "head" of the insurrection and should therefore "be summarily tried," then in Blackburn's view Eyre "would be excused."<sup>121</sup>

<sup>114</sup> Charge, in *Report of the Case of The Queen v. Edward John Eyre*, 53.

<sup>115</sup> *Ibid.*, 56.

<sup>116</sup> *Ibid.*, 57.

<sup>117</sup> *Ibid.*, 58–60, 81 ("reasonable firmness, self-control, and moderation"), 88 ("calmness, moderation, and self-control, which a man might be expected reasonably to have").

<sup>118</sup> See Charles Townshend, "Martial Law: Legal and Administrative Problems of Civil Emergency in Britain and the Empire, 1800–1940," *Historical Journal* 25 (1982): 167–95, at 171–72 (on this aspect of the standard in *Pinney*).

<sup>119</sup> Charge, in *Report of the Case of The Queen v. Edward John Eyre*, 88.

<sup>120</sup> *Ibid.*, 85.

<sup>121</sup> *Ibid.*, 85–86 (emphasis added).

Rather than determining whether it was objectively reasonable in the circumstances to believe that Gordon was a threat, the analysis now depended on Eyre's stated beliefs.

Although technical, Blackburn's negligence analysis reveals the extent to which legal proceedings continued to reshape the meaning of the suppression. In court, the realm of relevant facts and argumentative possibilities narrowed. The royal commission had explicitly disproven Eyre's principal assertions regarding the necessity of keeping martial law in force and Gordon's role in the rebellion. Blackburn himself told the jury that Gordon had not been "a party to any organized conspiracy."<sup>122</sup> Nonetheless, the legally relevant fact, given Blackburn's statement of the law, was that Eyre believed his actions to have been urgently necessary at the time. Out of court, members of the Jamaica Committee had argued that Eyre's claims to that effect should be critically evaluated on the basis of other documentary evidence. Buxton told the Commons, for instance, that Eyre had refused additional reinforcements on October 21, writing privately that he had "long before...got the rebellion under."<sup>123</sup> Buxton similarly quoted a military report sent to Eyre that confirmed "calm and quiet" conditions on a day on which thirteen men were executed and fourteen houses were burned.<sup>124</sup> The resulting conclusion, for Buxton, was that "ten minutes' inquiry" would have shown Eyre that threats reported at the beginning of the outbreak were exaggerated and quickly put down.<sup>125</sup> In court, Blackburn's analysis led the jury down a very different path. That later investigations had disproven Eyre's assertions was no longer relevant. His appraisal of the danger, viewed uncritically, would determine the legal result.

Even more important to the moral transformation the court process effected was Blackburn's second line of analysis, which concerned conflict between Jamaican and English law. To evaluate the indictment, the jury needed to know the nature and extent of Eyre's legal authority to act under martial law. This was a purely legal question to be settled by Blackburn. In doing so, Blackburn ruled that Jamaican rather than English law applied, which had important implications for those who saw the scandal as a threat to British justice.<sup>126</sup> When England colonized Jamaica, English settlers "carr[ied] with them the law of England, such as it was at the time."<sup>127</sup> But when Parliament granted Jamaica its own assembly, settlers gained the authority to enact new laws for themselves. Over time, this resulted in legal divergence. The imperial Parliament retained a "superior authority to overrule" colonial enactments, as occurred when Parliament abolished slavery. But according to Blackburn, apart from that superior authority, the Jamaican assembly had "independent authority to depart from English law."<sup>128</sup>

This mattered to Eyre's case because on Blackburn's reading, the Jamaican assembly had enacted martial law powers far more expansive than those

<sup>122</sup> *Ibid.*, 85.

<sup>123</sup> *Hansard*, 3rd ser., clxxxiv, col. 1773 (July 31, 1866).

<sup>124</sup> *Ibid.*; and cols. 1774–80 (giving additional examples).

<sup>125</sup> *Ibid.*, col. 1769.

<sup>126</sup> Charge, in *Report of the Case of The Queen v. Edward John Eyre*, 61.

<sup>127</sup> *Ibid.*, 62.

<sup>128</sup> *Ibid.*, 65–66.

available in England.<sup>129</sup> Reviewing Matthew Hale, among others, Blackburn found that in England, martial law was strictly limited by necessity and could never be imposed during peacetime. By this standard, there was “no reasonable doubt” that Eyre’s actions had exceeded even an “extended view of the prerogative.”<sup>130</sup> But English law was inapplicable. Instead, Jamaican law, which gave a “greatly extended power,” governed the case.<sup>131</sup> Under this law, Eyre possessed a “very arbitrary and great power” to “supersede[] the common law.”<sup>132</sup> The conclusion was that, while Eyre’s actions had contravened British precedent, they accorded with the more expansive authority written into Jamaican law.

Inasmuch as this finding structured the dismissal of the indictment, it gave rise to a further transformation in the moral of the scandal. For those like Mill who saw Morant Bay as a threat to British justice in the abstract, the solution to tyrannical practices sanctioned by tyrannical laws was *more*, not less, imperial control. As we saw, Underhill’s critique framed the uprising as a response to misrule; that is, to socioeconomic exploitation and political marginalization. From this perspective, Morant Bay was anti-colonial before the more widespread consolidation of anti-colonialism. The logic of Blackburn’s charge was very different. Indirectly, it proposed that the only way to maintain British rule of law—to ensure legal justice in the abstract—was to centralize imperial control.

### The Moral Transformation of Morant Bay

Centralization was of course what happened: in the wake of Morant Bay, Jamaica relinquished self-government and became a crown colony. Before his suspension, Eyre initiated this process himself, proposing to shrink and combine the two houses of the Jamaican assembly into one. His aim was to consolidate the power of the planter class and further exclude broad-based representation in government.<sup>133</sup> In London, by contrast, officials favored a reversion to crown colony status because doing so would grant the Colonial Office more control over the island’s affairs.<sup>134</sup> In a striking reversal for a body long committed to defending its legislative authority, the Jamaican assembly agreed to dilute its power. Like Eyre, most of the assembly called for imperial intervention to avert the specter of Haiti.<sup>135</sup> On Cardwell’s proposal, Parliament then enacted a law providing for a new government constituted by the crown, “with such Powers as to Her Majesty may best seem fitting.”<sup>136</sup>

<sup>129</sup> This expansive statutory authority developed beginning in the 1680s; martial law was declared frequently between then and the nineteenth century. See Lisa Ford, *The King’s Peace: Law and Order in the British Empire* (Cambridge, MA: Harvard University Press, 2021), 113–15, 136.

<sup>130</sup> Charge, in *Report of the Case of The Queen v. Edward John Eyre*, 74.

<sup>131</sup> *Ibid.*, 75.

<sup>132</sup> *Ibid.*, 78, 81.

<sup>133</sup> Holt, *The Problem of Freedom*, 303–4.

<sup>134</sup> See *Hansard*, 3rd ser., clxxxii, cols. 918–28 (February 22, 1866), 1173–77 (February 26, 1866).

<sup>135</sup> Green, *British Slave Emancipation*, 395 (quoting the assembly’s response to Eyre’s address); and Heuman, *Between Black and White*, 191–92.

<sup>136</sup> “Bill intitled An Act to Make Provision for the Government of Jamaica,” P.P., 1866, iv (29), 3.

This remaking took place in 1866; it is clearly not my claim that Blackburn's logic caused the turn to direct imperial rule. Instead, my point is that *The Queen v. Eyre* reveals the legal fulcrum of a conceptual transformation that took place as a range of British observers debated the Eyre scandal. Petitions sent from Jamaica to Cardwell declared that the colony was "not in a condition to be governed by representative institutions" and praised the prospect of crown rule.<sup>137</sup> Cardwell agreed. Representative institutions had failed, he told Parliament. Jamaica had become a "melancholy example of declension and decay."<sup>138</sup> Similarly, in Blackburn's legal analysis, representative government had unleashed arbitrary power unchecked by common-law constraints. These perspectives converged: the solution was metropolitan order, not colonial democracy.

If this article has traced the evolution of critical perspectives on the scandal, then this is its end point: what started as a rebellion against the perceived injustice of unrepresentative colonial rule ended up, even in the minds of Eyre's fiercest critics, as a justification for an authoritarian system of direct imperial rule. Like other major colonial scandals, Morant Bay exposed colonial violence but ultimately built support for a reformed and reconstituted empire.<sup>139</sup> Eyre compared Morant Bay to Haiti, and Mill compared Eyre to Robespierre.<sup>140</sup> But in the end, there was agreement that Jamaica should become a crown colony. Specifically legal proceedings and debates—centered on the royal commission and Eyre prosecutions—played a crucial role in this process of conceptual transformation. "Law and narrative are inseparably related;" in the case of Morant Bay, legal inquiry reshaped the meaning and moral of the event.<sup>141</sup> Transformed, the scandal of colonial rule became a new justification for empire.

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<sup>137</sup> Memorial signed by John James Steele and 235 others, St. Ann, enclosed in Storks to Cardwell, January 20, 1866, P.P., 1866, li (C.3749), 1; Storks to Cardwell, January 29, 1866, P.P., 1866., li (C.3749), 4–9 (enclosing similar memorials from Baptist congregations in St. Ann, Trelawny, and St. James).

<sup>138</sup> *Hansard*, 3rd ser., clxxxi, col. 926 (February 22, 1866).

<sup>139</sup> Dirks, *The Scandal of Empire*; Epstein, *Scandal of Colonial Rule*; and Satia, *Time's Monster*.

<sup>140</sup> Eyre to Cardwell, October 20, 1865, P.P., 1866, li (C.3594), 7; *Hansard*, 3rd ser., clxxxiv, cols. 1801–2 (July 31, 1866).

<sup>141</sup> Robert Cover, "Nomos and Narrative," in *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: University of Michigan Press, 1992), 96.

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