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J.S. Mill and the Contagious Diseases Acts: Whose Law? Whose Liberty? Whose Greater Good?

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Introduction

Legal fictions are often used to lubricate the machinery of jurisprudence. One of these is the idea that laws created to restrict the liberty of some individuals or class of individuals in order to protect the public good are in effect outcomes of trade-offs between abstract universals, namely liberty and the public good. A three-way relationship is imagined in which law, liberty, and the public good are in creative tension. The role of the law in this three-way tension is further imagined to be the mediator where it serves to calibrate this tension in ways that are also assumed to legitimate the intended outcomes in practice. In particular, where the outcome is the prevention of harm then laws that curtail liberty must be seen not just as measures for the public good, but rather as necessitated by the potential effects of the very harm itself. The justification for this view is often traced back to the views of nineteenth century political philosopher John Stuart Mill who famously expressed this in terms that have become known as the ‘Harm Principle’;¹ specifically that ‘the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.’²

Yet despite the alacrity with which modern day defenders of potentially intrusive or constraining laws appeal to this principle, Mill was not doctrinaire about its application. An example of this, and the focus of this paper, was his public opposition to the Contagious Diseases Acts (CDAs), first established in the 1864 as a series of legislative measures

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enacted by the British government in response to official fears that sexually transmitted diseases among army and navy personnel in the garrison towns were undermining the health and efficiency of the military.³ Mill gave evidence before a Royal Commission set up in 1870 to investigate the workings of the acts.⁴ For what had begun in 1864 as a seemingly uncontroversial public health measure had by 1870 become a major political controversy.⁵ Mill opposed the CDAs because they took away ‘the security of personal liberty ... almost entirely from a particular class of women intentionally, but incidentally and unintentionally, one may say, from all women whatever’.⁶ Mill well understood the preventive intent of the legislation, namely to counter the spread of disease, but he did not accept the CDAs as an appropriate means to achieve that goal.

Some scholars, noted liberal philosopher Jeremy Waldron for example, have been puzzled by Mill’s testimony because they see it as contradicting the position articulated in On Liberty whereby infringements of personal liberty were permissible in order to safeguard the public good.⁷ Waldron wondered whether this could be explained by Mill having changed his mind or that he was simply bending his philosophical principles to accommodate his political priorities at the time. Not accepting either of these possible explanations, Waldron opted for a third which he derived from examining Mill’s objections in the light of two ideas that he believed were central to Mill’s thinking in opposing the CDAs: legislative purpose and liberty as a distributive concept. Both ideas, especially the latter one, Waldron teased out of his re-reading of On Liberty. Analysing Mill’s objections in this light enabled him to explain why Mill objected to the uneven and negative distributive impact on women’s liberty. Interpreted from this perspective, argued Waldron, it was clear that Mill’s ‘Harm Principle’ could not be invoked, in and of itself, to justify policies that constrained individual liberty without some further justification. This was precisely Mill’s point but the basis for his reasoning was a reliance on an abstract universal understanding of liberty, though clearly a

conception of liberty informed his thought. At the heart of Mill's understanding was a feminist⁸ analysis that disappears from sight within Waldron's argument.⁹

A discussion of Mill's testimony before the Royal Commission offers an opportunity to consider a number of seemingly disparate issues. In the first instance it enables us to consider the general problem of the way in which an ostensibly sensible law aimed at securing the public good turns out to be particular in its effects. We should also stress that our concern is not with arguing about the paternalism of the state with respect to achieving a public good,¹⁰ but rather with how Mill's testimony enables us to identify the particularity of the law at work. Second, Mill's testimony offers an opportunity to consider the significance of his feminist principles and how these posed a challenge to the thinking of the learned Commissioners. In addition, it provides an opportunity to note the interdependency of his philosophy of liberty with his feminist principles and how these might be used to inform our understanding of a particular issue in practice. Third, via a brief discussion of Waldron's concern over a perceived inconsistency between Mill's testimony and his political philosophy, we can discern an instance in which Mill's known feminism disappears from view to leave a seemingly universalised explanation for his opposition to the CDAs. In representing the explanation for Mill's Royal Commission position in terms of liberty only, Waldron's argument recasts it, contrary to his stated position in his paper¹¹ (which turns out to be remarkably similar to that of Mill), in terms of a seemingly universalist trade-off between liberty and public good that obscures the particularity of the law (as identified by Mill). Finally, we consider Mill's anti-CDA arguments within the wider context of the British Empire since many of Britain's colonial possessions also enacted CDAs during the 1860s. In developing his conception of 'liberty' Mill explicitly noted that it did not apply to 'backward states of societies in which the race itself may still be in its nonage'.¹² This raises

the possibility that his principled opposition might not be exempt from questions of particularity.

The first step in our argument is to provide a brief overview of the introduction of the CDAs. This is followed by a discussion of Mill's testimony before the Royal Commissioners. We outline his key objections and his responses to some of the questions put to him to demonstrate his view that the CDAs could not achieve the public good as claimed by their proponents. We then discuss briefly Waldron's interpretation of Mill's testimony to demonstrate how the feminism of Mill's political philosophy, the basis upon which Mill's opposition rested, is removed from view. In turn, the particularity of the law with which Mill was concerned also disappears from view. Thus Mill's opposition to the CDAs enables us to understand that the relationship between law, liberty and the public good is not a matter of mediations between competing universal values. Rather, this relationship is one of partiality, even more so where sex and gender intersect since defending the prevailing gender order is the often unstated goal. In our view this is the lesson to be taken from Mill's testimony (despite the troubling complications afforded by considering the colonial implications of his argument).

The Contagious Diseases Acts Controversy Summarized

As noted earlier the Contagious Diseases Acts (CDAs) were promulgated in 1864 to prevent the transmission of sexual diseases among army and navy personnel.¹³ Initially the CDAs were localised to specific geographical areas, namely the English towns and ports with significant military populations. The scope and power of the Acts were extended in 1866, 1868 and 1869 with little or no parliamentary opposition. However, the amendments of 1869 precipitated the objections of many and catalysed them into a formidable political movement that led the British government to set up the Royal Commission in 1870. A Select Committee

of the House of Commons was also convened in 1879. Bridging both were various parliamentary debates that punctuated the parliamentary equilibrium until 1886, when the Acts were finally repealed.¹⁴

According to Mort, the introduction of the CDAs in England represented ‘the single most important legislative intervention’ in the nineteenth century to regulate sexuality.¹⁵ This probably overstates the case for the import of the CDAs at the time of their adoption, at least for the first Act in 1864 as it applied only to eleven geographically specific districts—Plymouth, Portsmouth, Woolich, Chatham, Sheerness, Aldershot, Chichester, Shorncliffe, the Curragh, Cork, and Queenstown—at which were based British soldiers and sailors. However, by 1869 the number of districts had grown to seventeen and had expanded the spaces of policing ‘to within a ten-mile radius of all districts subject to the Acts.’¹⁶ It was the promulgation of the 1869 Act that precipitated the wave of opposition as it included a non-garrison town, Southampton, within its remit. This expanded the policing of sexual hygiene beyond what had been rationalised when the CDAs were first implemented. In this respect it can be agreed with Mort that the CDAs were as much about the regulation of sexuality as they were about the prevention of the spread of disease.

However, there is a second sense in which Mort’s characterisation of the importance of the CDAs might be regarded as overstated. This concerns the historical priority given to their introduction in England as setting something of a template for controlling prostitution and sexual diseases within the British Empire as a whole. If one interprets the idea of regulation in a broad manner then it is clear that measures to manage prostitution long predated the introduction of the CDAs in 1864.¹⁷ Even within the empire official regimes of regulation already existed such as in Malta dating back several centuries, perhaps to ‘the time of the Knights’ as Howell has suggested,¹⁸ and Hong Kong from 1857, and from the early eighteenth century various sanitary measures (including the establishment of Lock Hospitals)

to combat venereal and other sexual diseases had been implemented in Penang, and then later in other parts of the Straits Settlements, and Yogyakarta.¹⁹ While none of these measures were necessarily aimed at regulating prostitution as such, there is no doubt that the regulatory intent was to prevent the spread of venereal disease.

With the enactment of the CDAs the regulation of venereal disease and prostitution were brought under a common legislative umbrella. This was because the means to combat the disease was to be achieved primarily through the policing and surveillance of those women thought to be prostitutes. In the first years of the operation of the CDAs this was relatively straightforward as the authorities were usually able to get the names of the women from the infected soldiers and sailors. For the most part the women apprehended by the authorities were most likely to have been engaged in some level of prostitution and hence, as far as most respectable people were concerned, rightfully apprehended. However, once the CDAs were extended to encompass what could be regarded as civilian spaces it was no longer possible to assume that the women detained by the authorities were necessarily prostitutes. As Walkowitz and Walkowitz demonstrated, many of these women might have engaged in acts of prostitution but this did not mean that they conformed to the typical stereotype of the nineteenth century prostitute.²⁰

It was assumed without question that the problem rested with the prostitutes rather than with their customers, the soldiers and sailors of the garrison towns. The problem was defined as the high rates of sexual disease within the military stationed in these towns, the cause was identified as the women who provided the sexual services, and the solution was therefore simple: inspect the women and refer the infected ones to appropriate medical treatment. For the military authorities (and their parliamentary and medical supporters) this was logical and the belief that the CDAs were influential in reducing the spread of disease was widespread long after the Acts had been repealed.²¹ But the Acts did more than simply

empower the authorities to identify and detain infected women, they required the registration of those deemed to be prostitutes and subsequently their regular examination by a medical authority. The CDAs allowed for women to choose to be examined, but if they refused to do so voluntarily they could be brought before a magistrate and forced to agree to a medical inspection. Moreover, those determined as having venereal disease could then be detained for up to nine months in what were known as Lock Hospitals. If women refused to subject themselves to medical detention, they were liable for ‘imprisonment with hard labour.’²² The burden of proof was placed on the woman to prove that she was not a prostitute, or at least that she was a woman of virtue. Thus a regulatory apparatus arose that claimed for its rationale the prevention of the spread of sexual diseases.

By its second and third iterations the CDAs were no longer confined to the detection of disease. They now included the surveillance of any activities in which a woman might be behaving in ways deemed by the authorities as less than proper. There were no clear criteria to identify a woman as a prostitute and often it was merely the view of the arresting officer that a woman was of loose morals. Moreover, surveillance activities expanded to include undercover type work by using police recruited from the Metropolitan Police Dockyard Division to detect women working as prostitutes.²³ This meant that the margin for error, never really narrow even with the first CDA, widened appreciably. Many women found themselves having to prove their virtue as a result of the allegation of a police officer. In many respects it was this expansion of the policing power and the growing incidences of its arbitrary operations that created the catalyst for public opposition to the CDAs.

Opposition was slow to make itself felt but by 1869 there were two key groups agitating for the repeal of the CDAs. One was the National Association for the Repeal of the Contagious Diseases Acts. It was made up of businessmen, clergy, and several prominent Members of Parliament. The other was the National Ladies Association for the Repeal of the

Acts. Its Secretary was Josephine Butler, whose fame partly rests on her political agitation against the CDAs. The key points of opposition were that the CDAs marked women as the problem, that women were forced to undergo genital examination at the behest of the arresting officer or magistrate, and that the Acts upheld (and promoted) a sexual double standard. In many respects these were also the types of criticisms that John Stuart Mill made to the Royal Commission on the Administration of the Contagious Diseases Acts. But before we go on to examine his views it is necessary to note here that the opposition to the CDAs, at least in the first few years, was not well received by prominent men.

The masculinist backlash was quite extreme, so much so that Josephine Butler's husband made a public statement denying that his wife had taken up the cause because she was unhappy or dissatisfied with their marriage.²⁴ Numerous men politicians expressed decidedly hostile views to Butler's work, among them Sir James Elphinstone MP, who declared that he 'look[ed] upon' Butler and her supporters 'as worse than the prostitutes'.²⁵ In addition, the CDAs had been endorsed by 'the intellectual might of England: the Presidents of all the Royal Medical Colleges, the Warden of All Souls, Oxford and the Master of Trinity College, Cambridge were prominent supporters.'²⁶ While the learned academy might not have been quite as vociferous as Elphinstone, it is clear that the level of opposition facing Butler and her colleagues was both formidable and organised. Almost all of those favouring the CDAs saw them as working for the public good. The infringement on the liberties of a small class of women was seen as a necessary means to ensure that the greater good was achieved. However, as Butler and her supporters reminded these proponents of the Acts, it appeared to be a most partial understanding of the public good. A similar position was taken by John Stuart Mill, and it is to his testimony before the Royal Commission that we now turn.

Mill on the CDAs

For some scholars, such as Waldron, Mill's testimony before the Royal Commission appeared to contradict his 'Harm principle' as expressed in On Liberty, and this in turn might be interpreted as contrary to the public good. This prompted Waldron to develop an argument to demonstrate that Mill's testimony did in fact support measures to realise the public good if one understands that his 'Harm principle' was also informed by a commitment to distributive liberty.²⁷ While we agree with Waldron that Mill remained committed to the public good, we would argue that Waldron was mistaken in his view that Mill's evidence contradicted his 'Harm principle'. As we shall demonstrate, Mill's evidence was entirely consistent with it. This is because Mill's political and philosophical position was sensitive to the politics of gender. He recognised that what was represented at the time as the public good was weighted against the needs and interests of women. In presenting Mill's testimony the importance of his wider political philosophy, especially his feminism, for his opposition to the CDAs cannot be understated. Yet when it comes to the scholarship on the CDAs there is surprisingly little discussion of Mill's opposition, and even within the subset of that scholarship with a specifically feminist perspective, Mill's contribution receives short shrift.²⁸

We shall return to his political philosophy later, but here it is worth noting that appearing before a Royal Commission was no small occasion. It was a very public act and hence would not have been taken lightly. Mill was a public figure, a former Member of Parliament (1865-68) and well-known for his outspoken support of social reform measures. One of the interesting aspects of Mill's views in the context of a Royal Commission is that the mode of evidence meant that he was subject to cross-examination. It is in the nature of Royal Commissions that, despite the usual parliamentary rhetoric to the contrary, they are expected to serve the purposes of those who set them up, in this case the government that had nominal responsibility for the Acts. Consequently, Mill's claims could not and did not go

unanswered by the Commissioners. He was obliged to defend those claims with reasoned arguments, not with ‘out of hand’ dismissals as claimed by some scholars.²⁹

Mill prefaced his testimony with an acknowledgement that he did not have a practical, working knowledge of the Acts, but that in his view this was not an issue of any consequence for his position. Throughout his testimony he made two things quite clear to the Commissioners. First, his opposition to the Acts was founded on principle, namely that the Acts were ‘opposed to one of the greatest principles of legislation, the security of personal liberty’.³⁰ Second, the legislation was partial and discriminatory; it really only threatened the personal liberty of one particular class of persons: women. While he acknowledged that the purported targets of the Acts were women prostitutes, in his view the liberty of all women was threatened. He was questioned on this point by Mr Nathaniel Massey who put it to him that ‘The Act of Parliament in express terms applies only to common prostitutes, plying their trade within the protected districts’. In response, Mill argued that the Acts gave the police discretion that may well allow them to apprehend ‘modest women, or women at any rate not prostitutes’. The power to apprehend women on suspicion and have them examined was a power ‘liable to very great abuse’ because, even if it was the case (as the Commissioners claimed) that no instances of abuse had been recorded, Mill argued that ‘when power is given that might easily be abused, we ought always to presume that it will be’, as such it was a power that ought not be given by such legislation.³¹ The potential for a policing power to be abused was also a point emphasised by Mill in On Liberty.³²

Certainly, Mill accepted that the purported object of the Acts was to ‘protect the innocent from having these diseases communicated to them’.³³ Having acknowledged this general objective, he immediately identified the double standard of the rationale for the Acts. The beneficiaries of this particular legislation were to be the soldiers and sailors of the garrison ports since it was the alleged incidence of venereal disease within the garrison towns

that prompted the legislation in the first place. As he pointed out to the Commissioners, the soldiers and sailors (and men clients in general) were not innocent victims, but complicit in their own infection insofar as they sought out and had, indeed paid for, connections with the alleged source of their disease. Consequently, argued Mill, if the government was serious about eradicating diseases of this sort then it would be better served to police the men.³⁴ He noted that ‘the same system of espionage which is necessary to detect women would detect also the men who go with them’.³⁵ However, he was not actually advocating ‘a system of espionage’ because he did not ‘recommend the Acts at all,’³⁶ rather he raised the idea of ‘espionage’ to illustrate the one-side operation of the acts:

I am not suggesting espionage; but if it is already in practice on women who go to brothels, with a view of ascertaining whether a woman is a prostitute by her being seen there, I think the woman should not be singled out to be subject to examination, but the men should be subjected to it also, or even if the women were not subjected the men might be, but if the one is, certainly I should say both.³⁷

Here we see once again, Mill’s concern with the equality of treatment before the law, an equality clearly breached by the terms and operation of the Acts.

It was not just that the CDAs singled out a particular class of women, and only women, for arbitrary policing, for Mill these women were also denied due process because a woman accused of prostitution had ‘no power to defend herself in the same manner as before any ordinary tribunal, and of being heard by counsel’.³⁸ The Commissioners pointed out to Mill that women had a choice to submit voluntarily or if they objected to be brought before a magistrate and in that case would have the opportunity to be ‘heard by counsel’. Mill agreed that a voluntary submission to medical inspection on the face of it was not an infringement of liberty. He disagreed that the system of summary tribunals provided adequate legal

protection for the women. Further, he argued, that ‘all the protection, which is necessary in other cases of judicial investigation, would be necessary in this’, because for a woman who was not a prostitute there could ‘hardly be any more serious case’ than to have her reputation maligned by an accusation of being a prostitute.³⁹ But the choice itself was hardly voluntary, especially as it presumed guilt on the part of the woman; if she refused a medical examination she had to prove to a magistrate that an examination was not warranted, in short to prove her innocence.

In noting the issue of reputation for women who were not prostitutes, Mill revealed his Victorian sensibilities and to some extent class-based view of prostitution. His juxtaposition of the non-prostitute woman with the prostitute was, as Zerilli has noted, ‘an uncritical acceptance of the nineteenth century binary opposition between the depraved and modest woman’.⁴⁰ Allied to this dichotomous way of framing women’s social character was another view, that of men as sexually insatiable, and hence ‘male lust was the driving force behind prostitution’.⁴¹ From this it followed that prostitution was a necessary evil that needed to be tolerated for the good of society. Zerilli also suggested that by invoking this binary opposition Mill repeated the dominant social prejudice that ‘figured the prostitute as the origin of the chain of contagion’.⁴² However, Mill’s position was not so clear cut. While it is true that his political economy language of supply and demand might have yielded, as Zerilli argued, a moral economy view of prostitution informed by his political economy, it is not the case that Mill saw men as sexually insatiable such that prostitution was a necessary evil. To the contrary, he did not see prostitution as something that would always be with us because he also advocated self-restraint by men, in and out of marriage. His view that marriage should be shaped by genuine mutuality and companionship downplayed the sensual,⁴³ which he thought could be kept in check by self-control and education.⁴⁴ Even if he was somewhat naïve (even moralistic) in his view of human sexuality, this nevertheless demonstrates that he

did not regard how humans acted on their sexual needs as innate and hence this was not, in the case of men, a justification for the institution of prostitution.

Mill also argued that even if a woman submitted voluntarily to the medical inspections, the Acts were still objectionable because they provided before the fact protection against ‘the consequences of immoralities of any kind’ rather than ‘remedying the consequences after they occur’.⁴⁵ The effect would be for the government to sanction immorality, if not give its outright stamp of approval. This was a view that the Commissioners attacked from a number of angles,⁴⁶ but Mill remained unshakeable in his view that the acts were objectionable in principle, partly because they appeared to sanction immorality and licentiousness, and partly because they were lopsided and discriminatory. For some scholars⁴⁷ the question of immorality loomed large in their evaluation of Mill’s opposition to the CDAs. But as the above demonstrates, the central problem for Mill was the sexist thinking informing the CDAs. In Mill’s view this thereby sanctioned the infringement of women’s liberty (and the concomitant punishment of those particular women who facilitated the sexual indulgences of men), and hence in the second place, gave de facto government approval to immoral and licentious behaviour (principally to benefit men). Finally, Mill also addressed the issue of what constituted ‘public good’ in the context of the CDAs because the Commissioners put to him that the Acts had been promulgated in the interest of the public good. However, Mill was having none of it. While the rationale for the CDAs was the prevention of the spread of contagious diseases the reality of these particular acts was to protect the men who engage with prostitutes. In Mill’s view, if the CDAs were to have any object at all then it would be to protect ‘those who are liable to take the disease without any voluntary exposure to it on their own part’.⁴⁸ In and of itself neither the sexual health of prostitutes nor their customers was the proper province of government if such sexual diseases were to be dealt with in isolation from other contagious diseases. That is,

Mill was of the view that there should be no ‘special favour to this class of diseases’ unless they were ‘part of a general system’ for handling all infectious diseases. What Mill objected to was ‘having special legislation for those women, which would have the effect of singling them out for a special cure, to which persons with other equally bad diseases are not subject’.⁴⁹

The public good would be served by dealing with contagious diseases across the board and not just a particular ‘class of diseases’ through measures that not only protected the customers of prostitutes, men, but also discriminated against prostitutes and by extension all women. Moreover, the CDAs were unable to protect those who neither sought out prostitutes nor placed themselves in a position to contract the disease because for the most part the acts addressed the problem after the event. In Mill’s view the CDAs ‘cannot be made effectual enough to stamp out these diseases unless it is made much more strict than it is, consequently much more oppressive to women, and still more liable to abuse’.⁵⁰ The CDAs merely enshrined men’s privileges and by extension reinforced their sexual despotism while simultaneously denying personal liberty to women, a reflection of the view Mill had developed in some detail in The Subjection of Women published only two years earlier.⁵¹ The effect of the CDAs was to give the imprimatur of the state to men’s sexual license while punishing some women and putting all women at risk of enforced medical examinations. Hence as far as Mill was concerned, the alleged public good was in fact partial.

Waldron on Mill’s ‘Harm Principle’ and the Elision of Mill’s Feminism

For Mill there was no contradiction between his general political philosophy of liberty and his testimony before the Royal Commission. However, as has already been noted, Waldron questioned how the author of the ‘Harm Principle’ could have opposed the CDAs since they were for all intents and purposes aimed at preventing harm. We have already detailed Mill’s

position on this and noted briefly Waldron's answer to this question but it is worth looking at it in a little more depth. Waldron re-read Mill's arguments in On Liberty to show that the 'Harm Principle' is not exclusively about choosing between the liberty of some (i.e. a seemingly discriminatory move) and achieving the security or good of the many. In his view, within Mill's argument in On Liberty, there is also a concern, albeit 'muted (although not absent)', not just with the aggregate but with 'the distribution of restrictions'.⁵² Mill's argument about liberty and the 'Harm Principle' should be understood in terms of the latter 'answer[ing] to concerns voiced in behalf of individuals not on behalf of liberty in the aggregate'. Waldron noted that 'this is very clear from the language Mill uses to formulate his principle'. He then re-states Mill's 'Harm Principle', stressing the parts that allegedly demonstrate Mill's preference for individuals, namely 'of any of their number' and 'any member'.⁵³

Waldron concluded that reinterpreting the arguments in On Liberty in terms of Mill's 'Contagious Diseases intervention' enables us to demonstrate what 'we should have been emphasizing all along'; namely that 'Citing the prevention of harm is not a way of rebutting concerns about a discriminatory or inequitably distributed restriction on liberty'.⁵⁴ If a particular piece of legislation produces an uneven distributive impact on people's liberty then it is insufficient to cite the 'Harm Principle' in its defence. Such legislative acts 'deserve[.] the closest scrutiny' because it may well be the case that they are legitimising 'prejudice and social apathy' in the form of 'apparently respectable legislative campaigns'.⁵⁵ In this way Waldron managed to provide an explanation that reconciles Mill's objections to the CDAs with his earlier arguments in defence of liberty. We would agree with Waldron on this point but he achieves it at a very high price. What is missing from Waldron's account is the contribution of feminist principles to Mill's political position. Waldron's explanation completely elided Mill's feminist sensibilities.

This is curious because Waldron acknowledged that Mill held feminist views that were important for his political thought. Yet their significance and importance for Mill's political philosophy were not given any attention beyond the most cursory of comments. He acknowledged that Mill was committed to feminist principles to the extent that he pointed out that he wanted 'to examine Mill's feminist objection to the Contagious Diseases Acts' in the light of Mill's 'insistence on asking whose liberty was affected and his complaint that the liberty of men was not affected in anything like the way in which the liberty of women was affected'.⁵⁶ However, at no stage did he address any of Mill's feminist arguments as expressed in, for example, The Subjection of Women, beyond noting the book's existence and that Mill wrote it. Rather Waldron took the particularity of Mill's objection as given, as if that was all that needed to be said about Mill's 'feminist objection'. In an almost throwaway comment Waldron noted that his essay 'brings together the author of On Liberty and the author of The Subjection of Women so that both can confront Mill the progressive'. And so Waldron posited three Mills: the feminist, the liberal philosopher of liberty, and the progressive who 'believed firmly in government taking the initiative to promote public health and hygiene'.⁵⁷ Hence no more needed to be said about why Mill volunteered to present his views to the Royal Commission. Rather, what needed explaining was why Mill was implacably opposed to the CDAs.

This is underscored by the way in which Waldron separated Mill into these different facets, in particular that of Mill the feminist (i.e. 'the author of The Subjection') and Mill the liberal (i.e. 'the author of On Liberty'), neither of which needed to trouble the other. Neatly compartmentalised, Mill's feminist sensibilities were represented as if they had no apparent relevance for any other of Mill's works, in particular On Liberty, the text of choice for Waldron's argument. Yet the fact that Mill wrote On Liberty in collaboration with Harriet Taylor should have suggested to Waldron that it might have borne some traces of their jointly

shared feminist sensibilities.⁵⁸ At the very least it might have suggested a need to consider whether the feminist ideas that he acknowledged as present in The Subjection might also have been present elsewhere in Mill's other works, especially On Liberty. However, Mill's feminist ideas were not incidental to his political philosophy, rather they were an important part of it. They helped frame his philosophical and political opposition to the CDAs, going way beyond the argument from morality that Waldron wanted to attribute to Mill—at least by association with many of his contemporaries (like Josephine Butler) who couched their opposition in distinctly moral terms.⁵⁹ While Mill's testimony occasionally exhibited similar turns of phrase his opposition remained framed by a political philosophy informed by clear feminist principles. By eliding Mill's feminism Waldron's re-reading of On Liberty represented Mill's position in terms of liberty only, and as such he set up a trade-off between liberty and the public good mediated by the 'Harm Principle'. However, such a trade-off is both unnecessary and mistaken as is revealed by even a cursory glance at the place of Mill's feminist thinking within his political philosophy as a whole.

On Mill's Feminism

Of course, Waldron is not the first scholar to elide Mill's feminism though he at least acknowledged it as part of Mill's philosophical standpoint. Others have gone much further in denying that it was of any consequence for his political philosophy, especially where the nature of his intellectual relationship with Harriet Taylor is concerned.⁶⁰ In identifying some of Mill's explicit feminist comments over the course of his life our intention is to emphasise their embedded-ness within his overall political philosophy. They were not momentary aberrations or the marginalia of his thought, but were an integral part of his overall political philosophy. Irrespective of the much later criticisms by twentieth century feminists of the nature and extent of what has come to be described as 'feminist' or 'feminism',⁶¹ none

dismiss the importance of his principled stand in the cause of women's social and political equality. In that respect his views clearly conformed to what might be taken as a generic view of what is meant by 'feminism', namely that it was a response 'to a belief that women have been oppressed and unjustly treated.'⁶² But the case for describing Mill's views as 'feminist' can be pressed a little further. Feminist historians have debated the applicability of the term given its origins in the late nineteenth century.⁶³ Without going into the intricacies of these discussions, it is possible to draw from them a number of characteristics that would warrant describing a thinker's ideas as 'feminist', despite the fact that their work might predate significantly the historical emergence of the term. These characteristics include a recognition that at the time of their writing there was a gender hierarchy, that they recognised that this hierarchy was socially constructed (not a fact of nature), that their writings critiqued this hierarchy, that they recognised the misogyny (or at least masculinist bias) of the dominant intellectuals of their time and wrote in conscious opposition to it, and finally, that women were understood as a social group whose unequal treatment required collective action to change it. On this basis it is appropriate to use 'feminist' in connection with Mill's political philosophy even if, as already noted, the adequacy of his views might fall short of twenty-first century expectations. There is certainly no doubt that he was an active supporter of women's emancipation as the publication of The Subjection reveals.

Published in 1869, just two years before the Royal Commission, The Subjection was something of a novelty for his contemporaries in that a man, well-known and widely esteemed as a philosopher and social reformer, had published a book-length critique of the legally sanctioned sexual basis for men's social and political subordination of women.⁶⁴ However, for Mill the subject matter was not novel. It had occupied his thoughts in various ways for most of his life, 'from the very earliest period when [he] had formed any opinions at all on social or political matters' and it had only grown stronger 'by the progress and

experience of life.’⁶⁵ The centre of this view was that the principle ‘which regulates the existing social relations between the sexes’ was wrong ‘in itself’ and that ‘it ought to be replaced by a principle of perfect equality admitting no power or privilege on the one side, nor disability on the other.’⁶⁶ While Mill developed a number of arguments in The Subjection in support of this proposition, the one of most importance for our purposes concerns his view of marriage as a form of sexual despotism.

In Mill’s view women were slaves in all but name: ‘the wife is the actual bondservant of her husband: no less so, as far as legal obligation goes, than slaves commonly so-called’, and as far as property rights were concerned ‘the wife’s position is worse than that of slaves in the laws of many countries’.⁶⁷ He did not accept that women were by nature inferior and men superior any more than he accepted that slavery was a natural condition for human beings. Women’s subjection to men came about through social processes built around custom and law that involved women being subjected to a power ‘common to the whole male sex’.⁶⁸ He noted that there were three things that combined to ensure all men could think and act on the idea that ‘by the mere fact of being born a male he is by right the superior of all and every one of an entire half of the human race’.⁶⁹

first, the natural attraction between opposite sexes; secondly, the wife’s entire dependence on the husband, every privilege or pleasure she has being either his gift, or depending entirely on his will; and lastly, that the principal object of human pursuit, consideration, and all objects of social ambition, can in general be sought or obtained by her only through him, it would be a miracle if the object of being attractive to men had not become the polar star of feminine education and formation of character.⁷⁰

As a result men, upon marriage, became petty tyrants (potentially if not always in fact) and women were expected to be their obedient ‘bond-servants’. As Mill put it ‘Marriage is the

only actual bondage known to our law. There remain no legal slaves, except the mistress of every house'.⁷¹ Marriage was thus central to women's subjection.

Mill also recognized that the problem of women's subjection within marriage went much deeper than legal equality or property rights. Marriage enforced a form of despotism that was all the more pernicious because of the very personal and intimate nature of the relations it entailed.

Every one of the subjects lives under the very eye, and almost, it may be said, in the hands, of one of the masters—in closer intimacy with him than with any of her fellow-subjects; with no means of combining against him, no power of even locally overmastering him, and, on the other hand, with the strongest motives for seeking his favour and avoiding to give him offence.⁷²

Yet Mill also recognized that precisely because of the intimacies involved men did not want 'a forced slave but a willing one'.⁷³ Hence men 'have therefore put everything in practice to enslave their minds'⁷⁴ so that the domination appears natural to both women and men alike. As Mill asked, not just for rhetorical effect, 'was there ever any form of domination that did not appear natural to those who possessed it?'⁷⁵ The problem of the subjection of women was not to be found in nature, or as a consequence of the supposed 'natural attraction between the sexes', but rather it was to be found within the prevailing social customs, habits, and laws. Hence Mill concluded that reforming the legislative basis for the relations between the sexes required more than legislation. It required changes to how women and men related to each other, to the long-entrenched habits of thought, and to the stereotypical turns of phrase that helped frame prevailing ideas about the natures and capacities of women (and men).

Mill gave a first inkling of his concerns in this area in an early essay entitled Periodical Literature: Edinburgh Review published in the Westminster Review in 1824

where he noted that ‘the sentiments which the Edinburgh Review has put forth concerning female character, are as little creditable to itself, and exemplify as completely the characteristic malady of periodical literature, as any which we have yet quoted.’⁷⁶ Mill saw this as part of the hypocrisy of the various contributors to the Edinburgh Review that the praiseworthy qualities of the exceptional woman were not what they demanded of the women they married or sought for company. Similarly, in a letter to Thomas Carlyle in October of 1833, Mill berated him for using sexist stereotypes and posed the question: ‘is there really any distinction between the highest masculine & the highest feminine Character?’⁷⁷ The embedding of sexist stereotypes in language was an ongoing concern for Mill. In the third and subsequent editions of A System of Logic (first published in 1843) Mill inserted a footnote decrying the use of the masculine pronoun ‘to express all human beings’ because such use served to ‘prolong the almost universal habit of thinking and speaking of one-half of the human species as the whole.’⁷⁸ In 1848 in Principles of Political Economy Mill noted that it was ‘the signal honour of Owenism and most other forms of Socialism that they assign equal rights, in all respects, with those of the hitherto dominant sex.’⁷⁹ For Mill this was a matter of principle ‘intimately connected with all the more vital points of human improvement’ and he looked forward to a time when ‘the ideas and institutions by which the accident of sex is made the groundwork of an inequality of legal rights, and a forced dissimilarity of social functions, must ere long be recognised as the greatest hindrance to moral, social, and even intellectual improvement.’⁸⁰ These ‘ideas and institutions’ were part of what he termed in a letter in 1858 to an Australian correspondent, Henry Chapman, ‘the Toryism of sex,’⁸¹ a phrase echoed three years later by that of ‘aristocracies of colour, race and sex.’⁸² Indeed in the letter to Chapman he chided him about how it was unfortunate that the Australians had taken up the term ‘manhood suffrage’ as it was a ‘vulgar and insulting expression’ that ‘asserts the exclusion of women as a doctrine, which is worse than merely

ignoring them as was done by giving the name universal suffrage to a suffrage limited to men.’⁸³

These examples taken from his writings spanning several decades indicate that his views in The Subjection were not a late-life epiphany leading him to tack on a feminist sensibility to an essentially well-established liberalism. Rather, if anything, it was his liberalism that was shaped by his sense of outrage that ‘an accident of sex is made the groundwork of an inequality of rights’. It is undecidable whether his feminist ideas could be said to be a guiding thread, and hence the touchstone for his overall political philosophy. However, his espousal of the ideal of ‘perfect equality’ and by extension the nature of his feminism as expressed in The Subjection, cannot be easily confined just to that one text, especially given his acknowledged collaboration with Harriet Taylor.⁸⁴ Mill’s concern about the unequal relations between the sexes clearly helped frame his thinking about abstract conceptual issues such as liberty, equality and justice. While Zerilli also interpreted Mill’s testimony as ‘figur[ing] the prostitute as the origin of the chain of contagion’,⁸⁵ a position with which we have less sympathy, she nevertheless clearly recognised the connection between Mill’s testimony and On Liberty. She too noted Mill couched his opposition to the CDAs ‘in terms that related to the central problem he posed in On Liberty’, namely determining the legitimate limits for the state’s intervention in the lives of its citizens.⁸⁶ In our view On Liberty was infused with Mill’s feminism. Of central significance was that part of On Liberty concerned with articulating his conception of what type of individual, what qualities of individual character, would be needed ‘to enter into the best kind of human relations’ such that the corrupting influence of relations of domination and subordination might be eliminated.⁸⁷ For Mill such an individual could only be a ‘socially constituted subject’, part of an other-regarding community of individuals.⁸⁸ Not for Mill the atomistic individualism typical of the utilitarianism promoted by Jeremy Bentham and his father,

James Mill, a conception of individualism that he thought was not conducive to fostering other-regarding social behaviour. Further, in 1874, just one year after Mill's death, both On Liberty and The Subjection of Women were published together in one volume, with a second edition appearing in 1879.⁸⁹ This would indicate that the publishers, if not some of Mill's supporters, understood the connection between these two works.

The problem of the legal basis of the relations between the sexes, the central problematic of The Subjection, was significant for his overall political philosophy. But it was also significant for his testimony before the Royal Commission given that it was published just two years before he appeared before the Royal Commission in 1871. While there is no causal link between the two events it would be surprising if The Subjection did not have some bearing on his thinking about practical policy issues like the CDAs. It is far more likely that it would have helped frame his thinking about these matters in at least two ways. First, it enabled him to place the relationship between the CDAs as a legislative measure and the general treatment of women into a complementary frame of reference. Second, it provided him with the means to apply his key philosophical concepts to the practical policy issues of day to day politics. Failure to take into account Mill's feminism means that we miss the point about his political stand in 1871. More importantly we miss the point about the nature of the gendered relationships likely to enjoin law, liberty and the public good. Yet if Mill's defence of women's rights in England animated his principled opposition to the CDAs, his views might be seen as implicated in their own form of particularity when it came to the treatment of colonised peoples under the control of English administrators.

Mill, the CDAs and Colonial Inflections

As has already been noted, the use of CDAs as a means to control venereal disease was not restricted to use within England. It is fair to say that practically all of the colonial possessions

within the British Empire pursued measures of one sort or another to address the problem of venereal disease within the armed forces. Thus some significant English colonial possessions enacted similar ordinances within their own jurisdictions: Hong Kong in 1857, India in 1868 (though an earlier version restricted to military garrisons known as the Cantonment Act operated from 1864), the Cape Colony in 1868, the Straits Settlements in 1870, and at various times in the nineteenth century in the colonies in what was later to become Australia. The measures in India, the Cape Colony and the Straits Settlements took place as the anti-CDA campaigns were gaining momentum in England (and they remained in place long after the English CDAs had been repealed).⁹⁰ As far as can be determined, Mill made no public comments about the operation of CDAs within the colonies, despite his background as a colonial administrator with the East India Company. It is thus indeterminate as to whether Mill's feminist informed opposition also extended to the colonial versions of the CDAs. However, even though Mill was silent on the colonial operation of CDAs we still need to ask whether his understanding of liberty, the basis for his opposition in England, applied to all regardless of geographical or class location, or whether it was limited only to those who could be regarded as 'civilized'?

Asking these questions is no idle matter because in On Liberty Mill stated explicitly that his conception of liberty, and by extension the 'Harm Principle', was 'meant to apply to human beings in the maturity of their faculties' rather than to those 'backward states of societies in which the race itself may still be in its nonage'.⁹¹ The mode of government and the means by which he thought that colonial rule might need to be exercised would not necessarily align with how it operated in the metropole due to the alleged lack of political maturity of the subject peoples. Hence Mill considered that 'despotism [would be] a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end.'⁹² Restrictions on liberty

within the colonies would not necessarily offend against the standards of liberty that would be expected within England. Given these views it is not surprising that many scholars from diverse perspectives have come to view Mill's political philosophy as constituting a rationalization for, if not a strong defence of, English colonial rule,⁹³ especially given his employment by the East India Company. Yet he was not necessarily an uncritical apologist for the British Empire.⁹⁴

Mill's views do not neatly map onto a dichotomy of metropole and colony in the sense that he had one set of principles for the former and a different set for the latter. Space precludes developing this in detail but what can be noted here is that his idea of liberty was not as exclusivist as his comments about despotism and the maturity of faculties might at first suggest. In addition, his conception of 'despotism' was also more complex than might be suggested by his apparent endorsement of it in On Liberty. Mill made it clear in numerous works, particularly in Considerations on Representative Government, that he was not an advocate of arbitrary political rule. Moreover, both within and between Considerations on Representative Government and On Liberty Mill uses 'despotism' in different senses ranging from a benign developmental meaning (in which the consent of the governed is over-ridden in the best interests of the governed) to the more familiar senses of arbitrary, even tyrannical, rule. This is most explicit in Considerations where, echoing his position in On Liberty, he notes that the realities of political rule might require a governing body to pursue undemocratic or authoritarian measures in order '[to] carry[.] the people through a necessary stage of improvement, which representative government, if real, would most likely have prevented them from entering upon'.⁹⁵ In both works, the sense of 'despotism' that Mill is at pains to defend, as distinct from that which he condemns, is informed by a concomitant understanding of what he sees as being in the best interests of the governed.

While it might be pushing the point to suggest, as Tunick has, that Mill's conception

of ‘despotism imposes a regime of legal rights that enforces toleration’, it can be agreed with him that at least *in principle Mill’s approach* ‘does not deny subjects their rights, or support their enslavement or arbitrary punishment, or require their assimilation’.⁹⁶ *It is on this basis that Tunick describes Mill as a defender of ‘tolerant imperialism’.* This is a beguiling notion but ultimately it glosses Mill’s actual position such that it denies the imperial sentiments that contributed to the complexity of Mill’s thought. As we note below, Mill had a particular view of the role of a colonial power and its responsibilities for those it ruled. It would take us too far afield to critique the idea of ‘tolerant imperialism’ on its own terms and Tunick’s concomitant recalibration of Mill’s political philosophy, but two things can be noted here. First, the idea of ‘tolerant imperialism’ begs the question as to what conception of toleration informs it since by definition imperial rule is imposed against the will of those subjected to it. Second, Tunick does not consider that such ‘tolerance’ as Tunick attributes to Mill might be described more accurately as the ‘anxiety of an imperial administrator’. This anxiety arises from an ever-present tension within liberalism between its key principles and the organization and exercise of political rule, a tension clearly present within Mill’s political philosophy. It is symptomatic of the ‘civilised distaste for the dirty work of empire’ that Hindess has argued ‘is a significant component of liberal imperialism’.⁹⁷ In noting this tension we are not denying that Mill also advocated toleration. Rather we want to point out that this tension between ‘liberty’ and ‘despotism’ recurs throughout Mill’s political philosophy, and that it was perhaps at its most taut in the context of colonial rule.

A striking example of this within Mill’s writings is his response to the Jamaica crisis of 1865 (and its governor’s handling of it). But before we move on to that discussion we also need to note here that while Mill’s political philosophy and his treatment of colonial themes exhibited at times a Euro-centric bias⁹⁸ it could not be described as racist. There is plenty of evidence, despite the views of some scholars,⁹⁹ that Mill eschewed racism.¹⁰⁰ For example, in

his essay 'On the Negro Question', he took issue with Thomas Carlyle's defence of slavery (and its explicit racism) by arguing that no matter the perceived differences in intelligence and station between whites and negroes such differences do not provide any basis for the white race 'to subdue them by force' or to enslave them for the benefit of white people.¹⁰¹ Mill consistently opposed what he called 'the iniquitous dominion of the law of might' and any appeals to racial characteristics to justify it.¹⁰²

Mill's very public and vociferous opposition to actions taken in the West Indies by its Governor, Edward John Eyre, illustrate his abhorrence of what he regarded as despotic (and possibly racially inflected) political rule. On this occasion the Governor imposed martial law to quell a minor uprising. In the process the authorities killed hundreds of black workers, as well as arresting and executing a mulatto member of the Colonial Assembly. For Mill the problem was not just that excessive force had been used. Rather, as Kohn and O'Neill point out, it realised his fear that a 'foreign governing class, especially one marked by racial difference' could not be trusted to bring about the improvement of its subject peoples.¹⁰³ That is, such colonial rulers would 'rivet the degradation of the multitude and leave them no hope of decent treatment'.¹⁰⁴ This would not be the benign despotism of On Liberty aimed at improving the character and lives of the governed. Rather it would be the form of despotism that he had consistently opposed. But this was only part of Mill's political position.

For Mill, the view of empire and colonial rule that he imagined (and advocated) could not be sustained if the British government did not hold Governor Eyre and his subordinates accountable for their actions.¹⁰⁵ That is, if the colonial authorities were not brought to account then the form of despotism that Mill favoured could not be seen to be reconciled with good government and progress for the colonized subjects. Rather colonial rule was simply 'the iniquitous dominion of the law of might'.¹⁰⁶ Despite Mill's efforts no colonial official suffered any penalty for that particular exercise of colonial authority. As Kohn and

O'Neill have shown, those events and their aftermath probably brought home to Mill the realization that his aim of 'reconcil[ing] his commitment to equality, liberty, and representative institutions with the practice of empire' was not possible.¹⁰⁷ These events were also a watershed insofar as they marked 'an important ideological shift in the ways in which empire would be justified and colonised people would be governed'.¹⁰⁸ Certainly, as far as Mill's political opponents and detractors were concerned the welfare of the colonized was secondary to the maintenance of order and stability so that the point of the colonial venture, namely the extraction of raw materials and creation of new markets for the colonial power, continued undisturbed.

The foregoing has given some background on how we might interpret Mill's conceptions of liberty and despotism in their colonial settings and hence on whether Mill's liberty based defence of women's rights in England can be understood as applying to women in the colonial settings. We also need to add here that his views on social progress were also closely allied to his views about women's social and political rights. Like a number of influential nineteenth century thinkers Mill promulgated the view that the 'elevation or debasement [of women] was on the whole the surest test and most correct measure of the civilization of a people or an age',¹⁰⁹ a view also held by his father in his A History of British India, first published in 1817.¹¹⁰ This would indicate that Mill was at least concerned with improving the social and political standing of women in the colonies. Given his views on the emancipation of women in a given society and what that might reveal about the state of progress of that society Mill would accept that achieving full social and political liberty applied as much to women in the colonies as to women in the metropole, regardless of class or race.

Furthermore, as we have seen one of the conditions for legitimate despotism was that any coercion had to be for the benefit of those being coerced. Given that the CDAs were

aimed at women, and only women, it is difficult to conclude that *their implementation in the colonies meant that for colonial women* ‘the end be their improvement’. Yet as has already been demonstrated the CDAs were not justified as being for the benefit of the women, even indirectly. Rather, the rationale for the CDAs was to check the spread of venereal disease and in so doing protect the clients of the prostitutes from becoming infected. Within Mill’s framework the coercive implementation of the CDAs could not be justified, even in the colonies, since their end was not the improvement of the colonial subjects’ capacities for progress. By the same token, if there is no justification for the coercion embedded in the CDAs then there can be no justification for infringing the liberty of the women. The issue for Mill remains the same. The principle of liberty was being infringed and its application was partial since it only applied to women, the fact that they were prostitutes or not English notwithstanding. Of course, there might be other reasons that Mill the colonial administrator might have *accepted the retention of* the CDAs in the colonies such as the health of the military to ensure the ongoing viability of colonial defences. *Nonetheless, it is reasonable to conclude that in principle at least* Mill did not favour any measures in a colonial context that would ‘deny subjects their rights, or support their enslavement or arbitrary punishment’.¹¹¹ Yet this is precisely what women faced under the CDAs operating in the colonies and in this respect Mill’s argument from liberty would still be relevant.

*On that basis it might be concluded that if Mill had been asked about the operations of the CDAs in the colonies he would have opposed them for the same reasons that he put to the Royal Commissioners. However, there are two reasons for suggesting that such a conclusion might overstate Mill’s position. In the first place, it has to be acknowledged that such rights as might have been enacted and upheld in the colonies were subject to the constraints of the imperial dynamic, as indeed were the colonized themselves regardless of gender.*¹¹² *As the Jamaican example brought home to Mill, the good of the colonized did not*

enter into that particular exercise of colonial authority. Secondly, there is Mill's idea of 'civilization' as a calibrating measure of a subject people's readiness or capacity to enjoy the benefits of individual liberty and hence self-government.¹¹³ For Mill the colonial power was obligated to try to raise up the colonized to an appropriate level of civilization so that they could eventually be fit for self-government. That is, implicit in Mill's support for a benign form despotism, benevolent despotism, in colonial contexts is the idea that it eventually it would or could become self-extinguishing as a matter of its own design. Yet the idea of benevolent despotism would seem to be a contradiction in terms,¹¹⁴ if not a case of wishful thinking on Mill's part. Again, the case of Jamaica clearly demonstrated that despotism remains the creature of tyranny no matter how it might be dressed up in less turbulent times. The hard reality of colonialism was that the colonizer's law and its conception of order prevailed. The rules applied in the colonies were neither universal nor were they aimed at transforming the colonial authority—even if they could be justified occasionally in terms of benefiting the colonized.¹¹⁵

Hence insofar as Mill favoured some form of despotism for ruling colonial subjects it would therefore follow that his conception of liberty likewise remains limited to those within the English metropole. While we have explored his position with some sympathy, once we consider how Mill's views might have applied to colonial contexts, the principles he put before the Royal Commission turn out to be more limited. From a feminist perspective in which gender issues take precedence one would have thought that if the CDAs were measures aimed at protecting men while penalising women then their operation in any geographic location would have been both inequitable. However, Mill's views turn out to be both geographically and culturally specific.

Conclusion

Mill's opposition to the CDAs enables us to understand that the relationship between law, liberty and the public good is not a matter of mediations between competing universal values. Moreover, his testimony pointed to more than just an instance where the policy means was not justified by the public good end. His principled opposition also revealed an understanding of how a law promulgated for the good of all was in fact particular in its application and impact. Mill was quite clear that the law was not mediating between or aiming to strike a balance between two equal concepts or universal goods, between liberty and the public good. Nor was it a case of Mill overlooking his own principles (especially the 'Harm Principle') as Waldron attempted to argue. Not only were the CDAs bad policy, they discriminated against women.

In his view an already discriminatory gender order was further protected by a legislative measure that meant that women would bear the brunt of social approbation for activities not within their control. It is arguable that even the activities of the prostitutes were a product of circumstances beyond their control since many of them faced Hobson's choice when it came to economic survival.¹¹⁶ In that respect it could be agreed with Zerilli that an undercurrent of Mill's thought was a fear that respectable women might themselves be drawn into prostitution,¹¹⁷ either through economic circumstance or as a consequence of police intervention. Nonetheless, the key issue for Mill was that the legislation discriminated against women. This was not an incidental by-product of well-intentioned legislation. Rather it was part of its logic dressed up in the universalist language of the pursuit of the common good. The legislation could not serve to calibrate the tensions between liberty and public good for two reasons. In the first place the liberty **and** public good in question could **not** be considered as **equally** universal concepts within the legislation. Second, in the context of the CDAs both liberty and the public good were specifically gendered since the benefits of the legislation

served to enhance men's liberty and men's enjoyment of the public good. This was the case regardless of the geographical place of operation of the CDAs.

Mill's testimony clearly exposed the partial and gendered nature of the CDAs. This was not accidental. It was a matter of specific intent. The legislation took away 'the security of personal liberty ... from a particular class of women', and perhaps as a sop to the Commissioners' views (not to mention the prevailing temper of the times) he added that it 'incidentally and unintentionally' affected all women. Consequently, the rationale for the creation of the CDAs was at best misleading, at worst false, because the legislation was not necessitated by the harms that were alleged to be the cause for legislative action. To the contrary, these harms remained largely untouched by the impact of the legislation. This was Mill's point. And in making this point before the Royal Commission, Mill presented an analysis that provided a clear example of the particularity of the law at work.

¹ The literature on Mill's 'harm principle' is way too vast to document here. The following several articles on various topics and from diverse positions illustrate the general acknowledgement of Mill in this respect, for example, Richard A. Epstein, 'The Harm Principle—And How It Grew', The University of Toronto Law Journal, 45 (1995): 369-417; Nils Holtug, 'The Harm Principle', Ethical Theory and Moral Practice, 5 (2002): 357-389; Steven D. Smith, 'Is the Harm Principle Illiberal', American Journal of Jurisprudence, 51, (2006): 1-42; Arthur Ripstein, 'Beyond the Harm Principle', Philosophy & Public Affairs 34 (2006): 215-245; W.E. Parmet, 'J.S. Mill and the American Law of Quarantine', Public Health Ethics, 1 (2008): 210-222; Claudio Tamburrini, 'What's Wrong With J.S. Mill's "Harm-to-Others"-Principle?' Journal of the Philosophy of Sport, 38 (2011): 1-26.

² J.S. Mill, 'On Liberty', XVIII, The Collected Works of John Stuart Mill, edited by J.M. Robson, 33 volumes, (Toronto: Toronto University Press, 1963-91), 223. All citations to Mill's writings hereafter will be from Collected Works (CW).

³ F.B. Smith, 'Ethics and Disease in the Late Nineteenth Century: The Contagious Diseases Acts,' Historical Studies 15 (1971): 118-135. There is a substantial literature on the CDAs and we cannot canvas it all here. For a representative sample see also C. Lee, 'Prostitution and Victorian Society Revisited: the Contagious Diseases Acts in Kent', Women's History Review, 21 (2012): 301-316; H. Self, Prostitution, Women, and Misuse of the Law: The Fallen Daughters of Eve, (London: Frank Cass, 2003); F.B. Smith, 'The Contagious Diseases Acts Reconsidered', The Society for the Social History of Medicine, 3 (1990): 197-215; F. Mort, Dangerous Sexualities: Medico-moral Politics in England Since 1830, 2nd ed., (London: Routledge, 1987); B. Caine, 'Feminism, Suffrage and the Nineteenth Century English Women's Movement,' Women's Studies International Forum 5 (1982): 537-550; J. R. Walkowitz, Prostitution and Victorian Society: Women, Class and the State, (Cambridge: Cambridge University Press, 1980); M. Hamilton, 'Opposition to the Contagious Diseases Acts,' Albion: A Quarterly Journal Concerned with British Studies, 10 (1978): 14-27; J.R. Walkowitz and D.J. Walkowitz, "'We Are Not Beasts of the Field": Prostitution and the Poor in Plymouth and Southampton under the Contagious Diseases Acts,' Feminist Studies, 1 (1973): 73-106.

⁴ M. St. J. Packe, The Life of John Stuart Mill, (London: William Clowes and Sons, 1954).

⁵ See the references in Note 3 above. The strength of this controversy varied geographically, on which see Lee, 'Prostitution and Victorian Society Revisited'.

⁶ Mill, 'The Contagious Diseases Acts' in CW: XXI, 351.

⁷ Jeremy Waldron, 'Mill on Liberty and the Contagious Diseases Acts', in N. Urbinati & A. Zakaras, eds., J S Mill's Political Thought: A Bicentennial Reassessment, (New York: Cambridge University Press, 2007), 16.

⁸ Later in the paper we take up the issue of whether it is appropriate to describe Mill's ideas as 'feminist' given that the word only came to prominence towards the end of the nineteenth century, nearly two decades after Mill's death, primarily as a term of derision. See Claire Goldberg Moses, "'What's in a Name?'" On Writing the History of Feminism?, ' Feminist Studies, 38 (2012): 763; Karen Offen, European Feminisms 1700-1950: A Political History, (Stanford: Stanford University Press, 2000), 19.

⁹ This is the key reason that we have singled out Waldron's interpretation of Mill's testimony before the Royal Commission for discussion. Perhaps without intending to do so Waldron's interpretation provides a paradigm example of how feminist ideas come to be marginalised. Indeed we would go further and suggest that Waldron's treatment in effect erases Mill's feminism (its contested status notwithstanding) from consideration of Mill's engagement with the Royal Commission and the CDAs in general.

¹⁰ See for example L. O. Gostin and K. G. Gostin, 'A Broader Liberty: JS Mill, Paternalism, and the Public's Health,' Public Health, 123 (2009): 214–221, O'Neill Institute Papers. Paper 19. http://scholarship.law.georgetown.edu/ois_papers/19.

¹¹ Waldron, 'Mill on Liberty', pp. 36-37.

¹² Mill, 'On Liberty' in CW: XVIII, 224.

¹³ See note 3 above.

¹⁴ Hamilton, 'Opposition', 18.

¹⁵ Mort, Dangerous Sexualities, 68.

¹⁶ Walkowitz and Walkowitz, "'We Are Not Beasts of the Field'", 101-102, n. 5.

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- ¹⁷ P. Howell, 'Prostitution and Racialised Sexuality: The Regulation of Prostitution in Britain and the British Empire before the Contagious Diseases Acts,' Environment and Planning D: Society and Space, 18 (2000): 321-339. See also P. Levine, 'Rough Usage: Prostitution, Law and the Social Historian,' in A. Wilson, ed., Rethinking Social History: English Society 1570-1920 and Its Interpretation, (Manchester: Manchester University Press), 267 who notes that as early as 1162 in the city of London there were regulations enacted to govern brothels and prostitutes.
- ¹⁸ Howell, 'Prostitution and Racialised Sexuality', 326-327.
- ¹⁹ Ibid., 326; P. Levine, Prostitution, Race and Politics: Policing Venereal Disease in the British Empire, (New York: Routledge, 2003), 38; J.F. Warren, 'Prostitution and the Politics of Venereal Disease: Singapore, 1870-98', Journal of Southeast Asian Studies, 21 (1990): 360-83.
- ²⁰ Walkowitz and Walkowitz, "'We Are Not Beasts of the Field'", 74.
- ²¹ R. Lawson, 'The Operation of the Contagious Diseases Acts among the Troops in the United Kingdom, and Men of the Royal Navy on the Home Station, from their Introduction in 1864 to their Ultimate Repeal in 1884,' Journal of the Royal Statistical Society, 54 (1891): 31-69.
- ²² S. S. Holton, 'Women and the Vote' in J. Purvis, ed., Women's History: Britain 1850-1945, An Introduction, (Bristol: UCL Press, 1995), 239.
- ²³ Lee, 'Prostitution and Victorian Society Revisited', 303.
- ²⁴ L. Hall, 'Hauling Down the Double Standard: Feminism, Social Purity and Sexual Science in Late Nineteenth-Century Britain,' Gender & History, 16 (2004): 44.
- ²⁵ Ibid.
- ²⁶ Smith, 'The Contagious Diseases Acts Reconsidered', (1990), 199.
- ²⁷ Waldron, 'Mill on Liberty', 39.

²⁸ Of the scholarship mentioned in note 3 above, only three works discuss Mill and the CDAs, notably these three were written from a feminist perspective. Indeed, a relatively recent study of Mill's life and political activism (J.L. Kinzer, J.S. Mill Revisited: Biographical and Political Explorations, (New York: Palgrave Macmillan, 2007) makes no mention of Mill's objections to the CDAs (nor indeed on Mill's attempt to secure voting rights for women), despite the alleged focus on Mill's engagement with significant political issues of his day.

²⁹ Waldron, 'Mill on Liberty', 19.

³⁰ Mill, 'The Contagious Diseases Acts', in CW: XXI, 351.

³¹ Ibid., 352.

³² Mill, 'On Liberty' in CW: XVIII, 294-5.

³³ Mill, 'The Contagious Diseases Acts' in CW: XXI, 354.

³⁴ Ibid., 354.

³⁵ Ibid., 354. Mill's emphasis.

³⁶ Ibid., 363.

³⁷ Ibid., 362-3.

³⁸ Ibid., 352.

³⁹ Ibid., 353.

⁴⁰ L. Zerilli, Signifying Woman: Culture and Chaos in Rousseau, Burke, and Mill, (Ithaca, NY: Cornell University Press, 1994), 130.

⁴¹ Ibid., 133.

⁴² Ibid., 131.

⁴³ J.S. Mill, 'On Marriage' (1832-33?) in CW: XXI, 39-40. Mill expanded on his companionate view of marriage in 'The Subjection of Women' in CW: XXI, 278, 294-5, 336.

⁴⁴ Mill, 'The Subjection', in CW: XXI: 285, 288. See also Mill, 'On Liberty', in CW: XVIII: 278; Mill, 'A System of Logic: Ratiocinative and Inductive', in CW: VIII, 859.

⁴⁵ Mill, 'The Contagious Diseases Acts', in CW: XXI: 352.

⁴⁶ *Ibid.*, 360, 363, 365-7, 371.

⁴⁷ For example, Waldron, 'Mill on Liberty'; Zerilli, *Signifying Woman*.

⁴⁸ Mill, 'The Contagious Diseases Acts', in CW: XXI: 356, also 354, 366.

⁴⁹ *Ibid.*, 366.

⁵⁰ *Ibid.*, 355.

⁵¹ See pp. 16-18 below.

⁵² Waldron, 'Mill on Liberty', 38.

⁵³ *Ibid.*, 41, fn 62 (Waldron's emphasis).

⁵⁴ *Ibid.*, 39.

⁵⁵ *Ibid.*, 41.

⁵⁶ *Ibid.*, 32.

⁵⁷ *Ibid.*, 16.

⁵⁸ As Mill himself affirmed, see J. S. Mill, 'Autobiography' in CW I: 249 ff.; also 'On Liberty', CW XVIII: 215. See also A. Rossi, 'Sentiment and Intellect: The Story of John Stuart Mill and Harriet Taylor Mill', in Alice S. Rossi, ed., Essays on Sex Equality: John Stuart Mill and Harriet Taylor, (Chicago: University of Chicago Press, 1970).

⁵⁹ Waldron, 'Mill on Liberty', 13.

⁶⁰ See for example A. Bain, John Stuart Mill: A Criticism with Personal Recollections, (London: Longmans, Green & Co., 1882); F. Hayek, John Stuart Mill and Harriet Taylor: their Friendship and Subsequent Marriage, (Chicago: Chicago University Press, 1951); G. Himmelfarb, On Liberty and Liberalism: The Case of John Stuart Mill, (New York: Alfred

Knopf, 1974); H.O. Pappe, John Stuart Mill and the Harriet Taylor Myth, (Melbourne: Melbourne University Press, 1960).

⁶¹ There is a vast literature debating the nature of J.S. Mill's feminism. For a very small sample, mostly critical and from a variety of perspectives, see J. Annas, 'Mill and The Subjection of Women,' Philosophy, 52 (1977): 179-194; S.M. Okin, Women in Western Political Thought, (Princeton: Princeton University Press, 1979); L. Goldstein, 'Mill, Marx, and Women's Liberation,' Journal of the History of Philosophy, 18 (1980): 319; Z. Eisenstein, The Radical future of Liberal Feminism, (New York: Longman, 1981); J. Ring, 'Mill's The Subjection of Women: The Methodological Limits of Liberal Feminism,' The Review of Politics, 47 (1985): 27-44; C. MacKinnon, Feminism Unmodified: Discourses on Life and Law, (Cambridge: Harvard University Press, 1987); G. Tulloch, Mill and Sexual Equality (Hertfordshire: Harvester Wheatsheaf, 1989); M.L. Shanley, 'Marital Slavery and Friendship: John Stuart Mill's The Subjection of Women,' Political Theory, 9 (1981): 229-247; C. Di Stefano, Configurations of Masculinity: A Feminist Perspective on Modern Political Theory, (Ithaca: Cornell University Press, 1991); M. Gatens, Feminism and Philosophy: Perspectives on Difference, (Bloomington: Indiana University Press, 1991); K. Burgess-Jackson, 'John Stuart Mill, Radical Feminist,' Social Theory and Practice, 21 (1995) 369-396; E.S. Smith, 'John Stuart Mill's The Subjection of Women: A Re-Examination,' Polity, XXXIV (2001): 181-203; W. Stafford, 'Is Mill's "Liberal" Feminism "Masculinist",' Journal of Political Ideologies, 9 (2004): 159-179; J. Jose, 'No More Like Pallas Athena: Displacing Patrilineal Accounts of Modern Feminist Political Theory,' Hypatia: A Journal of Feminist Philosophy, 19 (2004), 1-22; Zerilli, Signifying Woman.

⁶² J. Grimshaw, Feminist Philosophers: Women's Perspectives on Philosophical Traditions, (Hempel Hempstead: Harvester Wheatsheaf, 1986), 21.

⁶³ Moses, 'What's in a Name?,' 762 ff; Offen, European Feminisms, 19-26; V. Sapiro, A Vindication of Political Virtue: The Political Theory of Mary Wollstonecraft, (Chicago, IL: The University of Chicago Press, 1992), 258 ff; N. Cott, 'What's in a Name? The Limits of "Social Feminism"; or, Expanding the Vocabulary of Women's History,' Journal of American History, 76 (1989): 809-29; J. Kelly, Women, History and Theory: The Essays of Joan Kelly, (Chicago, IL: University of Chicago Press, 1984), 65 ff.

⁶⁴ For some discussion of the social and sexual subordination of women see, for example, M. Doggett, Marriage, Wife-beating and the Law in Victorian England: 'sub virga viri', (London: Weidenfeld & Nicolson, 1992); M. Finn, 'Women, Consumption and Coverture in England, c. 1760-1860,' The Historical Journal, 39 (1996): 703-722; R.B. Siegel, "'Rule of Love': Wife Beating as Prerogative and Privacy,' The Yale Law Journal, 105 (1998): 2117-2207;); J.E. Hasday, 'Contest and Consent: A Legal History of Marital Rape', California Law Review, 88 (2000): 1372-1505. If the general condition of women in nineteenth century England was lamentable, then that of prostitutes was much worse since at that time 'prostitutes, like animals, had no legal personalities' (Smith, 'Ethics and Disease', 119).

⁶⁵ Mill, 'The Subjection', in CW: XXI, 261.

⁶⁶ Ibid., 261.

⁶⁷ Ibid., 279.

⁶⁸ Ibid., 266.

⁶⁹ Ibid., 313.

⁷⁰ Ibid., 269.

⁷¹ Ibid., 312.

⁷² Ibid., 266.

⁷³ Ibid., 271.

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- ⁷⁴ Ibid.
- ⁷⁵ Ibid., 269.
- ⁷⁶ Mill, 'Periodical Literature: *Edinburgh Review*', in *CW: I*, 311.
- ⁷⁷ Mill, 'Letter to William John Fox', *CW: XII*, 184. Mill's emphasis.
- ⁷⁸ Mill, 'A System of Logic: Ratiocinative and Inductive', *CW: VIII*, 837, n. 51. The third edition appeared in 1851, and although the citation here is to the eighth edition in the *Collected Works*, the footnote remained unchanged in all subsequent editions.
- ⁷⁹ Mill, 'Principles of Political Economy', *CW: II*, 209.
- ⁸⁰ Mill, 'Principles of Political Economy', *CW: III*, 765).
- ⁸¹ Mill, 'Letter to Henry Chapman', *CW: XV*, 557.
- ⁸² Mill, 'Utilitarianism', *CW: X*, 259.
- ⁸³ Mill, 'Letter to Henry Chapman', *CW: XV*, 558.
- ⁸⁴ Rossi, 'Sentiment and Intellect'; Jo Ellen Jacobs, 'Introduction', in Jo Ellen Jacobs, *The Complete Works of Harriet Taylor Mill*, (Bloomington: Indiana University Press, 1998).
- ⁸⁵ Zerilli, *Signifying Woman*, 131. Given the close nature of Mill and Harriet Taylor's relationship, and that Taylor's first husband (John Taylor) allegedly contracted syphilis early in their marriage, it is highly unlikely that Mill would have regarded men as merely innocent recipients of such diseases. See Jacobs, 'Introduction', xxxi-xxxii.
- ⁸⁶ Zerilli, *Signifying Woman*, 127.
- ⁸⁷ Maria Morales, *Perfect Equality: John Stuart Mill on Well-constituted Communities*, (Lanham: Rowman and Littlefield, 1996), 109; Karen Zivi, 'Cultivating Character: John Stuart Mill and the Subject of Rights' *American Journal of Political Science* 50 (2006): 49-61.
- ⁸⁸ Zivi, 'Cultivating Character,' 50. See also Morales, *Perfect Equality*.

⁸⁹ The editorial comment prefacing the online text of the single edition of these two works points out that Mill was somewhat reluctant to publish The Subjection of Women ‘during his lifetime because he feared the condemnation of his peers for daring to apply the general notions of individual liberty which he had clearly spelled out in On Liberty to the particular case of women. So he withheld publication until just before his death. It was left to an enterprising publisher after the author’s death to recognize the connection between the two works and to combine them in a new edition.’ See John Stuart Mill, On Liberty and The Subjection of Women, New York, 1879. Accessed from <http://oll.libertyfund.org/title/347>.

⁹⁰ For example, in Singapore arguments over the merits of the CDAs were ongoing well into the 1890s even though they had been repealed there in 1888. See for example, D.G. Galloway, ‘Essay on the Contagious Diseases Acts’, Proceedings of the Straits Philosophical Society, 1 (1893): 71-80. See also J.F. Warren, ‘Prostitution and the Politics of Venereal Disease’.

⁹¹ Mill, ‘On Liberty’ in CW: XVIII, 224.

⁹² Ibid.

⁹³ There is a vast literature critiquing Mill’s relationship with English colonialism, not to mention that of the tradition of liberalism generally. For some typical critiques see B. Parekh, ‘Liberalism and Colonialism: a Critique of Locke and Mill, in ed. J. Pieterse & B. Parekh, eds., The Decolonization of Imagination: Culture, Knowledge and Power, (London: Zed Books, 1995); U. S. Mehta, Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought (Chicago: University of Chicago Press, 1999); E. Souffrant, Formal Transgression: J.S. Mill’s Philosophy of International Affairs, (Lanham: Rowman and Littlefield, 2000); B. Baum, Rereading Power and Freedom in J. S. Mill (Toronto: University of Toronto Press, 2000); S. Dossa, ‘Liberal Imperialism? Natives, Muslims, and Others,’

Political Theory, 30 (2002): 738–45; J. Pitts, A Turn to Empire: The Rise of Imperial Liberalism in Britain and France, (Princeton: Princeton University Press, 2005).

⁹⁴ M. Kohn & D.I. O'Neill, 'A Tale of Two Indias: Burke and Mill on Empire and Slavery in the West Indies and America, Political Theory, 34 (2006): 221.

⁹⁵ J.S. Mill, 'Considerations on Representative Government' in CW: XIX, 416-417.

⁹⁶ M. Tunick, 'Tolerant Imperialism: John Stuart Mill's Defence of British Rule in India,' The Review of Politics, 68 (2006): 599.

⁹⁷ B. Hindess, 'Not at Home in Empire', Social Identities: Journal for the Study of Race, Nation and Culture, 7 (2001): 369.

⁹⁸ How this bias might be characterized and assessed is a matter of some debate (especially as it also impacts on how Mill's political philosophy relates imperialism and colonial rule). For some discussion of Mill and 'civilizational hierarchies' see Kohn & O'Neill, 'A Tale of Two Indias', 210-211.

⁹⁹ See for example K.A. Ballhatchet, 'John Stuart Mill and Indian Education,' Cambridge Historical Journal, 11 (1954): 228; A.L. Harris, 'John Stuart Mill: Servant of the East India Company,' Canadian Journal of Economics and Political Science, 30 (1964): 185-202; G.D. Bearce, British Attitudes Toward India 1784–1858, (Westport: Greenwood, 1982); Mehta, Liberalism and Empire, 195-196; Dossa, 'Liberal Imperialism?', 739 and 742.

¹⁰⁰ This is not to deny the various racist cross-currents within liberal thought (on which see, for example, Hindess, 'Not at Home'; Charles Mills, The Racial Contract, (Ithaca, Cornell University Press, 1999); D. Losurdo, Liberalism: A Counter-History, translated by G. Elliott, (London: Verso Books, 2011)), but rather to acknowledge that Mill himself was well-known for his hostility to racism.

¹⁰¹ Mill, 'On the Negro Question' in CW: XXI, 93.

¹⁰² J.S. Mill, 'On the Negro Question', 87. For present purposes, our discussion abstracts from the issue of whether this developmental argument still mires Mill as deeply within the imperial mindset as his more racist compatriots. As Kohn and O'Neill have argued, Mill clearly accepted and used a 'concept of civilizational hierarchy' in defending the colonizer's right to rule the colonized (Kohn & O'Neill, 'A Tale of Two Indias', 206; see also Hindess, 'Nowhere at Home'), though he did not necessarily subscribe to the potentially racial hierarchies that others correlated with it to justify such rule.

¹⁰³ Kohn & O'Neill, 'A Tale of Two Indias,' 212.

¹⁰⁴ Mill, 'Considerations', in CW: XIX, 419.

¹⁰⁵ Kohn & O'Neill, 'A Tale of Two Indias', 218-219.

¹⁰⁶ Mill, 'On the Negro Question', in CW: XXI, 87.

¹⁰⁷ Kohn & O'Neill, 'A Tale of Two Indias', 220-221.

¹⁰⁸ K. Mantena, 'The Crisis of Liberal Imperialism' in D. Bell, ed., Victorian Visions of Global Order: Empire and International Relations in Nineteenth Century Political Thought, (Cambridge: Cambridge University Press, 2007), 122.

¹⁰⁹ Mill, 'The Subjection', in CW: XXI, 276.

¹¹⁰ For his father's view see J. Mill, A History of British India, (London: Baldwin, Craddock, and Joy, 1817). A variation on this trope was also expressed by utopian socialist Charles Fourier (see his Charles Fourier: The Theory of the Four Movements, ed. G. Stedman Jones & I. Patterson, Translated I. Patterson, (Cambridge: Cambridge University Press, 1996) and both Karl Marx and Friedrich Engels, separately and together (see K. Marx, Economic and Philosophical Manuscripts of 1844, in K. Marx: Early Writings, Introduced by L. Colletti, Translated R. Livingstone & G. Benton, (New York: Vintage Books, 1975); K. Marx & F. Engels, The Holy Family, or Critique of Critical Criticism Against Bruno Bauer and Company, Translated R. Dixon & C. Dutt, (Moscow: Progress Publishers, 1975); and F.

Engels, Anti-Duhring: Herr Eugen Duhring's Revolution in Science, Translated E. Burns, (Moscow: Progress Publishers, 1975). For some critical analysis from a feminist perspective of their use of this trope see Jose, 'No More Like Pallas Athena'. For an argument about J.S. Mill's debt to his father, not just for this trope, but for his feminism in general, see T. Ball, 'Utilitarianism, Feminism, and the Franchise: James Mill and his Critics,' History of Political Thought, 1 (1980): 91–115; against this see J. Jose, 'Contesting Patrilineal Descent in Political Theory: James Mill and Nineteenth-Century Feminism,' Hypatia, 15 (2000): 151–74.

¹¹¹ Tunick, 'Tolerant Imperialism', 599.

¹¹² Here we would add that the colonies themselves figured in a sexual economy benefitting administrators, military personnel and travellers alike. Rules of conduct that might have applied at home often were relaxed or ignored within the colonies. See for example the varied interpretations of K. Ballhatchet, Race, Sex, and Class under the Raj: Imperial Attitudes and Policies and their Critics, 1793-1905, (London: Weidenfield and Nicholson, 1980); R. Hyam, Empire and Sexuality: The British Experience, (Manchester: Manchester University Press, 1991); A. McClintock, Imperial Leather: Race, Gender and Sexuality in the Colonial Contest, (New York: Routledge, 1995).

¹¹³ J.S. Mill, 'Civilization', in CW: XVIII, 122.

¹¹⁴ We would like to thank one of our anonymous reviewers for drawing our attention to this point.

¹¹⁵ J. Jose, "'Like Prussic Acid in a Bottle of Medicine": Liberal Principles and Colonial Rule', Postcolonial Studies, 13 (2010): 199-214.

¹¹⁶ It is not without some irony that we note that this very phrase, 'Hobson's choice', was used by Mill when commenting on why many men of his own time seemed determined to deny equal rights to women. He noted that in the absence of meaningful alternatives, if men

insisted on the 'law of marriage' being a 'law of despotism', then women were left with 'only Hobson's choice'. Hence Mill noted that such logic entailed that it was 'wrong to bring women up with any acquirements but those of an odalisque or of a domestic servant'. See Mill, 'The Subjection', in CW: XXI, 282.

¹¹⁷ Zerilli, Signifying Woman, 131.