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John Stuart Mill on Prostitution: Radical Sentiments, Liberal Proscriptions

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> "If ever any system of privilege and enforced subjection had its yoke tightly riveted on the necks of those who are kept down by it, this has."
>
> -John Stuart Mill, "The Subjection of Women" (*Collected Works* 21: 268)(1)

> "Take the foot off our necks, then we will hear in what tongue women speak."
>
> -Catharine Mackinnon, *Feminism Unmodified* (45)

<1> When we think of the great nineteenth-century debates on the regulation of prostitution, the name of John Stuart Mill does not immediately spring to mind. In studies of both nineteenth-century prostitution, and of Mill's writing, there is scant reference to his thinking on this subject. In terms of feminist scholarship, this is understandable; such work frequently focuses on the often marginalized role of women activists in legal reform and on revealing the untold stories of women's lives as prostitutes. But in the context of the vast corpus of Mill scholarship, this lack of attention to his views on prostitution is at first surprising. Indeed, despite the avowed renaissance in Mill scholarship over the past few decades, there are only two substantive analyses of Mill's opinions on prostitution. Jeremy Waldron's essay, although providing insightful analysis, only considers Mill on prostitution as a means of further explication of his other philosophical works, rather than as an analysis of prostitution regulation per se.(2) Similarly, while Jim Jose and Kcasey-Renea McLoughlin rightly challenge Waldron's analysis by reasserting the importance of Mill's feminism, their specific focus is not on prostitution and related debates over its regulation.

<2> This confirms Maria Morales' argument that "systematic philosophical reflection of Mill's significant body of work on matters concerning women's social condition has come relatively slowly and continues to suffer from considerable gaps" ("Rational Freedom" 43). And so, perhaps, this lacuna should not come as such a surprise, despite the central role of both the phenomenon of prostitution and Mill himself in the emergence of feminist activism and ideas. In this article, I suggest that this failure to engage with Mill's writings on prostitution impoverishes

historical and philosophical analyses of Mill himself and his philosophy, and of our understanding more generally of prostitution regulation in the nineteenth century. Drawing on Mill's evidence before a Royal Commission investigating the regulation of prostitution via the Contagious Diseases Acts, his opinions on prostitution expressed in "On Liberty," and his personal correspondence, I argue that an examination of Mill's approach to prostitution regulation can enrich our understanding of Mill's impact on nineteenth-century debates over the role of the state and law, especially in matters of morality and sexual freedom. Further, my analysis adds weight to propositions that Mill was a more radical feminist than is often assumed. Indeed, I will suggest that a study of Mill's approach to prostitution regulation shows that, at least in his sentiments, if not in his proscriptions for law reform, he was more closely aligned to what we would now term radical feminist thinking, than is often thought to be the case.

Prostitution: The "Great Social Evil"

<3> Prostitution, of course, was a great social concern in the nineteenth century. It was a focus for considerable political campaigning and debate as it drew together a range of controversies such as the emerging and developing role of the state, the liberalization of sex and sexual activity, and the role of women and feminist activism. As a subject matter for political debate, it dominated discussions throughout the 1850s and 1860s, engendering the greatest controversy with the enactment of the Contagious Diseases Acts. This series of measures, first enacted in 1864 and finally repealed in 1886, empowered the relevant authorities to subject suspected prostitutes in named military towns and ports to internal medical examinations and, if found to be suffering from venereal disease, to be detained in specific hospitals for up to nine months. The immediate impetus for this coercive legislation was concern over the efficacy of the military due to the high incidence of venereal disease. The acts were, therefore, primarily aimed at preventing the spread of the disease among the military, though the wives and children of men using prostitutes, who then became infected, were also the subject of concern.

<4> While the first act in 1864 was passed almost without comment, protest grew very quickly at the instigation of the emerging feminist movement (Walkowitz 1; McHugh 37). Josephine Butler formed the Ladies' National Association for the Repeal of the Contagious Diseases Acts and, while there was much general support for repeal, it was feminist campaigning that was largely responsible for the eventual reform. By the late 1860s, agitation had grown to such an extent that in order to placate opposition, the government established a Royal Commission to investigate the operation of the acts.

<5> It was in this heightened atmosphere of political tension that Mill appeared before the Royal Commission. His evidence provides a clear insight into his approach to prostitution regulation, though this was not the first time that his views on the subject were made public (Mill 21: 351-71). In his paean to personal freedom, *On Liberty*, Mill considered the justification of legal sanctions against pimps (28: 296-97). Overlooked then as now, these passages in *On Liberty*, together with his Royal Commission evidence, provide crucial information on his publicly expressed views. To these sources can now be supplemented insights revealed from his letters, particularly those written during the repeal campaign against the acts (17: 1692-93).

<6> Like most of his contemporaries, Mill saw prostitution as one of the "great social evils" of his time. He declaimed that

> with the exception of sheer brutal violence, there is no greater evil that this propensity [male sexuality] can produce than prostitution. Of all the modes of sexual indulgence, consistent with personal freedom and the safety of women, I regard prostitution as the very worst; not only on account of the wretched women whose sole existence it sacrifices, but because no other is anything like so corrupting to the men. (17: 1693).

This statement reveals Mill's common ground with the dominant public mood, which labeled prostitution a social evil (Walkowitz 32). But it also identifies key differences, particularly in terms of understanding or explaining male sexuality. As Judith Walkowitz has written, the "unthinking acceptance of male sexual license set the tone for parliamentary discussions of prostitution, regulation and the age of consent during most of the Victorian period" (70). But not only was male sexual license an accepted facet of society, so was the idea that such sexuality was innate and immutable, something that was simply to be acknowledged and managed (Kingsley Kent, 60-79). It was such assumptions that generated the idea of prostitution as a "safety valve," a necessary expedient to enable men to satisfy their innate urges (Mill 17: 1692-93; Kingsley Kent, 60-79).

<7> Mill dismissed this conception of male sexuality and that of prostitution as a "safety-valve." Such an approach, he said, was "the true conservative stand point" (17:1692). He suggested that such ideas had been "fostered" by the "tendencies of civilisation (which has been a civilisation left mainly to the influence of men)" (17: 1692). In other words, Mill argued that as men have dominated society and culture, they have been able to create and sustain a particular view of their sexuality, one which requires social norms accepting its inevitability and permitting its release. But far from being innate and immutable, Mill argued that sexuality is socially constructed and, indeed, that as society progresses, sexual "passion" would come "completely under the control of the reason" (16: 1693). As Richard Bellamy points out, Mill's pursuit of individualism was not about a "licence for the unrestricted satisfaction of one's wants and desires," but consisted "in the ability to rise above sensual, animal instincts and passions through force of will" ("T. H. Green" 132).

<8> Similarly, in "The Subjection of Women," published in 1869, Mill rejected the idea that women and men's differences were based in nature and that the doctrine of separate spheres was therefore "natural" (Tulloch xv; Mill 21: 261-340). Mill challenged the idea that the status quo was inevitable, rejecting arguments from nature and biology about the status of women, and he suggested that we cannot really know women's true nature in view of the social conditioning to which they have been subject (Tulloch xiv).(3) We can see, therefore, that Mill rejected common assumptions about men and women, arguing that sexuality was socially constructed and social norms were generated and sustained by men's dominance, in politics, culture and their "almost despotic power" as husbands (Mill 18: 301; Tulloch 159).

Challenging the Male Demand for Prostitution

<9> As well as challenging dominant ideas about the innate nature of men's sexuality and thus the inevitability of prostitution, Mill also departed from dominant thinking on where the blame should lie for the existence of prostitution; such blame was generally placed at the foot of women working as prostitutes. This approach was epitomized in the 1871 Royal Commission report on the acts which rejected any argument that the women and men who participated in this "sin of fornication" were to be treated equally: "there is no comparison to be made between prostitutes and the men who consort with them. With the one sex the offence is committed as a matter of gain; with the other it is an irregular indulgence of a natural impulse" (Royal Commission xix; Walkowitz 71). As Belinda Brooks-Gordon has argued, the "image of the innocent male seduced by the self-seeking immoral female permeated discourse on prostitution in Victorian England"; here this image becomes enshrined in the acts (7).

<10> Challenging such an argument, Mill made his position clear on where the "blame" lay in his evidence to the Royal Commission. As noted above, the acts were introduced with the aim of reducing the incidence and spread of venereal disease; the means chosen to meet this end was the subjection of women working as prostitutes to inspection and possible detention. Mill challenged the means employed, commenting that a "woman cannot communicate the disease but to a person who seeks it, and who knowingly places himself in the way of it" (21: 354). He continued that a "woman can only communicate it through a man; it must be the man who communicates it to innocent women and children afterwards" (21: 354). Mill stated, therefore, that if the object of legislation was to protect innocent wives (as well as the army), then "the way to do that is to bring motives to bear on the man and not on the woman" (21: 354). And Mill continued that he considered there to be various ways to focus on the man's actions. He suggested that if the police were to engage in "espionage" to identify prostitutes, as the acts provided, then the "same degree of *espionage*" should "detect the men who go with" prostitutes and the men can "be obliged to give an account why they are there" (21: 354).

<11> This evidence was incendiary and was met with incredulity from the (all male) Royal Commissioners, one of whom asked: "Am I to understand you seriously propose that in this country we should adopt a system of espionage over every man seen going into a brothel, and that men seen to go into a brothel should be subject all alike to personal examination?" (21: 362) Mill did not support the "espionage" introduced by the acts, but where such regime was to be deployed, with the purported aim of reducing the prevalence of venereal disease, then Mill did indeed consider that a focus on men who demand prostitution was appropriate. And, in actual fact, he went further. He also recommended "very severe damages in case a man is provided to have communicated this disease to a modest woman, and in the case of his wife, divorce is a matter of right; I think that a stronger case in which to apply the remedy of divorce can hardly be conceived" (21: 354-55). Mill considered that this "crime," of communicating disease to the innocent, was "one of the gravest a man could possibly commit," it being "so serious as to warrant the dissolving of the marriage tie" (21: 355). Advocating a right to divorce for women on this basis was radical in the extreme and emphasized the significance of Mill's focus on men's actions and role in relation to the prevalence of prostitution.

<12> Mill's locus of the blame for prostitution on men, and his recommendations for constraining this male demand, represented a serious challenge to commonplace beliefs not just

about marriage and divorce, but also to attitudes towards women working as prostitutes. The acts, Mill declared in his Royal Commission evidence, could not be "justified on principle, because it appears to me to be opposed to one of the greatest principles of legislation, the security of personal liberty" (21: 351). His concern was not just with a "particular class of women," that is prostitutes, but "all women whatever" because of the discretion of the police to label any woman a prostitute. He referred to the subjection of women to medical inspection as a "tyrannical operation by force of law." In private correspondence, Mill referred to the acts as "utterly depraving to the mass of the population" and representing "gross inequality between men and women" (16: 1688).

<13> What is striking here is not just that Mill sees this legislation as an affront to liberty, but specifically a challenge to the freedom of all women, including women prostitutes. Even where the disquiet was with "innocent" women being labelled prostitutes, few extended concern to the women themselves. Indeed, the prominence at the time of Lecky's defence of prostitution due to its performance as a "safety valve," was not just based on ideas of male sexual right, but also on the grounds that it protected virtuous women from being subjected to their husband's demands, revealing his deep disinterest in the welfare or interests of women working as prostitutes (Lecky 300). Not only was Mill publicly defending the rights of women prostitutes, but he was also undermining the *sotto voce* argument of defenders of the legislation, namely that it protected the personal liberty of men who used prostitutes by reducing the risk of their being infected with disease. As Jim Jose and Kcasey-Renea McLoughlin argue, in Mill's view, the legislation "enshrined men's privileges and by extension reinforced their sexual despotism . . . while simultaneously denying personal liberty to women" (11).

<14> It was this attack on the privileges of men demanding prostitution that, as we have seen, invoked the indignation of the Royal Commissioners. Mill was demonstrating in his evidence the application of his principles of equality, here arguing not just for the formal equality of women and men before the law in terms of both being subject to the acts, but also a more substantive understanding of the inequalities facing women. Mill did not wish to simply remove the acts from the statute book and carry on. He wished to focus attention on the men who create the demand for prostitution and without whom, he considered, there would be no requirement for this or similar forms of legislation. In doing so, he recognized that women undertaking prostitution were often doing so as a result of economic or other adverse circumstances.(4)

<15> Mill's sympathies lay with the women whom he saw as part of the "criminal and vicious classes" more generally (21: 366). He supported greater intervention in the lives of the poor and "dangerous classes" to encourage and help them out of their destitution; what he did not support was the especial focus on prostitution (21: 366). In other words, he saw the plight of the women prostitutes as part and parcel of the general conditions of poverty of the working class, conditions which demanded action. He concluded: "It would not be beyond the proper function of the State to take means of making these persons understand that they are not considered as totally unworthy of any kind of regard or consideration by the rest of their fellow-creatures, but that it is the object to reclaim them, and do them as much good as their condition makes them susceptible of. Such measures, at all events, might be applied to the dangerous classes more generally, much more than ever has been done yet" (21: 366).

Prostitution and the Proper Function of the State

<16> In today's parlance, the acts legalised prostitution. Mill was fundamentally opposed: "I do not think that prostitution should be classed and recognized as such by the State." (21: 359) He considered that the legislation "provide[s] securities beforehand against the consequences of immoralities of any kind" (21: 353). This he saw as entirely different from remedying consequences after they occur; that is, treating women or men for venereal disease once they have been infected. Indeed, in trying to ensure that prostitutes are free from disease, the "State is in fact going out of its way to provide facilities for the practice of that profession" (21: 354). The acts gave "some degree of encouragement" to prostitution (21: 355). Indeed, when asked about legal regimes that provide a form of licensing of some prostitutes and prostitution-related activities, as was common on the continent at the time, he stated that his objections to the acts "exist in an extreme against licences because they have still more of the character of toleration of that kind of vicious indulgence than exists under the Acts at present" (21: 356). In arguing that the acts encouraged "vice," Mill wrote that there is "no parallel case of an indulgence or pursuit so avowedly disgraceful and immoral for which the government provides safeguards" (26: 1791). To make his point, he suggested that a parallel case would be "supplying stomach pumps for drunkards, or arrangements for lending money to gamblers who would otherwise be tempted into theft" (16: 1791). In response to those who argued in favour of "establishing prostitution on a legitimate basis," he stated: "I think them completely wrong in principle and mistaken as to the practical benefits which seem to arise from such a plan" (16: 1524).

<17> In relation to such pragmatic considerations, and drawing on his knowledge of continental regulation, Mill also argued that legalization of this form leads to "clandestine" prostitution; in other words, it leads to the sort of two-tier prostitution that today plagues such regulatory systems. He also suggested that because of the legitimizing effect of regulation, and as the acts "afford increased security to the men who frequent these women, it is liable to produce an increase in the demand for prostitutes and therefore bring forth in that way an increased supply" (21: 364). He continued by arguing that if licensing were introduced in new areas, there might be a diminution of "avowed prostitution, without any real diminution of real prostitution"; that is, the "problem" would simply change shape or geographical area, rather than diminish (21: 364).

<18> This trenchant critique of legalization, however, gave way to a considerably more equivocal stance when the individual liberty of pimps and brothel-keepers came into question. Mill first raised these issues in *On Liberty* when he considered that "fornication, for example, must be tolerated . . . but should a person be free to be a pimp?" Mill stated the general principle should be that: "Whatever it is permitted to do, it must be permitted to advise to do" (18: 296). Thus, as fornication was lawful, and should not be proscribed, so its promotion or instigation should similarly be lawful. However, he continued that this general principle may be in doubt when the instigator "derives a personal benefit from his advice; when he makes it his occupation, for subsistence or pecuniary gain, to promote what society and the state consider to be an evil" (18: 296). In such situations, there is a "class of persons with an interest opposed to what is considered as the public weal and whose mode of living is grounded on the counteraction of it" (18: 296).

<19> This is a situation, he stated, which lay on the "exact boundary line between two principles, and it is not at once apparent to which of the two it properly belongs. There are arguments on both sides" (18: 296). On the side of "toleration," he continued, merely following an occupation "cannot make that criminal which would otherwise be admissible" and that "society has no business, *as* society, to decide anything to be wrong which concerns only the individual" (18: 296). On the other hand, although the public, or the State are not warranted in authoritatively deciding, for purposes of repression or punishment, that such or such conduct affecting only the interests of the individual is good or bad, they are nonetheless, "fully justified in assuming, as they regard it as bad, that is being so or not is at least a disputable question" (18: 296-97). In such circumstances, the state "cannot be acting wrongly in endeavouring to exclude the influence of solicitations which are not disinterested" (18: 297). There can "surely . . . be nothing lost, no sacrifice of good" by ensuring that individuals "either wisely or foolishly" act on their own prompting, as "free as possible from the arts of persons who stimulate their inclinations for interested purposes of their own" (18: 297). In such arguments, Mill held that there is "considerable force," but he declined to decide whether they were sufficient to justify the "moral anomaly of punishing the accessary," of "fining or imprisoning the procurer, but not the fornicator" (18: 297).

<20> Mill took a similar position when asked about the regulation of brothel-keeping during his evidence before the Royal Commission. He stated that this was an "extremely difficult question" and that he would rather not give an opinion on it "because so many pros and cons have occurred to me when I have thought about it that I have found it very difficult to make up my mind" (21: 369). He had "always felt it very difficult to lay down a general rule on the subject" (21: 360). Nevertheless, he did assume some level of regulation, posing the question as one of whether brothels "should be systematically put down, or let alone to a certain degree" (21: 369). His ambivalence arose due to the "very wide reaching considerations as to the degree to which the law should interfere in questions of simple morality and also how far it should attack one portion of the persons who conspire to do a particular act while it tolerates others" (21: 360).

<21> On other questions of prostitution regulation, Mill made clear that he did he see the necessity of street solicitation being controlled and that this was "the duty of the police, in order to preserve the order of the streets" (21: 369); though it is certainly arguable that he would have objected to specific laws on the subject. He also raised the possibility of stronger measures to prevent young women being encouraged into prostitution, stating that: "I perhaps would go further for the protection of the extremely young persons that most people would" and continuing that he would not "be at all averse to raising considerably the age below which it should be prohibited" to have intercourse of any kind with young girls (21: 365). Mill drew quite a clear line between those who he deemed to have capacity, and therefore to be free to make their own, often wrong, decisions, and those who lacked capacity in respect of which significant, preventative, and potentially coercive measures could be taken for their own good.

Prostitution Regulation: Liberal and Radical Feminist Perspectives

<22> Mill is generally characterized as the quintessential liberal feminist (Gray xxiv). As suggested by Gail Tulloch and Wendy Donner, Mill's liberalism is assumed to replicate liberal

feminist modes of thinking and theorizing. Translating "Mill the liberal feminist" into debates on prostitution regulation leads to further assumptions, exemplified by Belinda Cheney: "The liberal view, stemming from the philosophy of John Stuart Mill, is that the law has no legitimate function in prohibiting anyone from choosing or practising the lifestyle of prostitution, or in penalizing adults who, by consent, engage in sexual activity for money" (248). While Cheney's characterization of this approach as "liberal" is apposite, her linking of these modes of thought to Mill is not.

<23> Indeed, it is difficult to see Mill's thinking reflected in any of the different varieties of regulatory regimes currently labeled "liberal." Taking legalization first, this approach manages prostitution, permitting it in specific circumstances, often with geographical zones and/or the provision of licences. It is an approach closely associated with jurisdictions such as the Netherlands, parts of Australia, and Nevada in the United States (Brents and Hausbeck, 270-95; Kilvington, Day, and Ward 78-92; Weitzer 88-105). Closely associated with the idea of a "necessary evil" (21: 371), legalization is also the informal choice of many public authorities who may turn a blind eye to prostitution-related activities even when prohibited. Supported by many as a pragmatic response to an intractable problem, liberal feminist Martha Nussbaum argues that legalization "is likely to make things a little better for women who have too few options to begin with" (278).

<24> It was precisely legalization in the form of the acts to which Mill vehemently objected, viewing it as state toleration of a harmful practice. While Mill's perspective is a moral one at root, his argument was also that legalization would be ineffective in reducing prostitution and may in fact lead to its increase. The difference here between Mill and other liberals who similarly find prostitution unwelcome, but advocate its toleration, is that Mill's liberalism is an "ethical liberalism," founded on the strong moral discourse of character (Bellamy "Liberalism" 2; Jones, 287-308). This is Mill the "public moralist" (Collini viii) who argued that "genuine social reform must be premised on the reformation of the moral world" (Morales "The Corrupting Influence" 101). He could not countenance the state legitimating both the practice of prostitution and its associated assumptions about male sexuality.

<25> Another approach, often termed liberal, is a mixed variety of regulation exemplified in England and Wales and propounded by the 1957 Wolfenden Report which recommended that the act of selling or purchasing sex itself remain lawful, but that most associated activities, such as soliciting, kerb-crawling, and brothel keeping, be criminalized (Wolfenden 79-117). Characterized as an "influential liberal statement" (Weeks 239), the report created a clear public-private divide, purporting to balance the private interests of individuals who may wish to engage in prostitution, with ensuring that the public are protected from the "nuisance" and "offence" of prostitution in their streets (Matthews, 98-100). However, focusing on street activities has meant a disproportionate criminalization of women prostitutes, justified by Wolfenden on the basis that: "the simple fact is that prostitutes do parade themselves more habitually and openly than their prospective customers, and do by their continual presence affront the sense of decency of the ordinary citizen" (87).

<26> As in the case of legalisation, it is commonly assumed that the Wolfenden-based approach also reflects Mill's thinking (Hart 14; Devlin 105); yet as in the case of legalization, there is little real evidence to support such a claim. The public-private divide, writ large in Wolfenden regulatory approaches, is often suggested as a liberal tenet. Yet Mill was a clear advocate of "interference" in the private lives of citizens. Indeed, as Morales argues, Mill was the first liberal to *criticize* the public-private divide and to "underscore the incompatibility of domination in the 'private' realm with equality, justice and democratic rule in the 'public'" ("Rational Freedom" 46). Mill advocated fundamental reform of the institution of marriage, not just in the terms of the public nature of the contract, but most specifically in relation to the private relations between husband and wife (21: 259-340; Tulloch 1989). He condemned the "despotic" power of husbands and the concomitant prevalence of what we now label as rape and domestic violence within marriage (Morales "Rational Freedom" 47). For Mill, therefore, it would never have been sufficient or satisfactory to simply introduce reform to remove prostitution from public gaze. Moreover, the disproportionate focus on women would have attracted Mill's ire, as would the location of blame on women as psychologically flawed temptresses of men.

<27> The other principal liberal approach is that of decriminalization, which entails repealing laws that specifically target prostitution, regulating it in similar ways to any other form of work. (5) To the extent that this mode of regulation does not specifically target prostitution, Mill would be an ally. Mill was especially critical of the acts because they centered attention on just one group of vulnerable people, women prostitutes, and provided treatment for just one medical condition, infection with venereal disease. But it is in relation to the conceptual foundation of decriminalization, and the other liberal regulatory regimes considered above, to which Mill would have exercised some distance. Decriminalization is premised on libertarian arguments about individual choice, lack of demonstrable harm, and personal privacy and is akin to other liberal modes of regulation in terms of its neutral stance on the morality of prostitution and its acceptance of the inevitability of prostitution. As we have seen, Mill was clearly critical of prostitution, pimps and brothel keepers. He was not neutral, nor did he regard pimping or brothel keeping as private activities to be shielded and protected from public regulation. His criticism focused on those who encouraged prostitution, especially for their personal gain, and who exploited the often vulnerable.

<28> It seems, thus far, that Mill shares little common ground with current liberal approaches to prostitution regulation. Indeed, when we look at his foundational principles, focusing on the "guilt of the man" rather than of the "prostitute herself" (Reeves 431), we see that his guiding beliefs are more akin to that of modern-day radical feminist ideas that identify the male demand for prostitution as the cause of prostitution, the reason for its continuation, and the locus of its harm.(6) Viewed as a form of violence against women, prostitution is considered by radical feminism as evidence of men's continued dominance in society and an expression of ongoing assumptions about the necessity and validity of male demands for sexual access to women. Mill shared such perceptions.

<29> Mill also shared the ambition of radical feminists to eradicate prostitution, envisioning a society in which there was no need for prostitution. His radical proposals for an egalitarian conception of marriage, what he termed "perfect equality," were to result in significant change in

men and women's relations such that prostitution would not be sought out (21: 261). In addition, progress, and in particular progress towards his ideal form of character, he thought, would lead to the more rational treatment of sex and sexual activity. In this way, the radical and progressive vision of a society in which marriage is based on ideals of perfect equality, and men and women have risen above the animal instincts of sex, would be a society that had no need for prostitution. (7)

<30> Mill, therefore, shared the sentiments of radical feminism. However, he would have departed from their proscriptions for law reform. Focusing on the demand for prostitution, radical feminists advocate the criminalization of the purchase of all sexual services, with the ultimate aim of eradicating prostitution. The corollary of the criminalization of users is the decriminalization of those who sell sex, thereby recognizing their vulnerability and facilitating their exit from prostitution. As discussed by Gunilla Ekberg, this approach aims to clearly distinguish between the vulnerability of those selling sex and the culpability of those who generate the demand.

<31> But as we have seen, for Mill, the individual act of buying or selling sex was not itself sufficient to warrant legal proscription. He envisioned abolition, but saw this as likely to occur due to broader changes in society, especially the emergence of a more egalitarian form of marriage. He did not see legal proscriptions as a prerequisite to ensure the eradication of prostitution. Nor did he see the harm in the specific act of purchasing or selling sex, such that he would endorse a radical feminist commitment to criminalize the users of prostitution. It was exploitation and the profit motive that troubled him. Gertrude Himmelfarb has suggested that much as Mill "would have liked to put the procurer or keeper of a gambling house out of business, he could not bring himself to do so without imperilling his basic principle" (Himmelfarb 319). His sentiments were with radical feminism, and this informed his approach to legal regulation. Mill's sympathy clearly lay with the women who worked as prostitutes and his condemnation focused on the men he saw as exploiting vulnerable women and being responsible for many forms of oppression. But where there was no such coercion or exploitation, liberty should prevail. Perhaps, in this light and in relation to brothels, Mill might have endorsed measures that enable small numbers of women to work together as prostitutes, forming what have been termed in current debates "mini-brothels" (Barrett); he might have endorsed subjecting only those brothels engaged in more coercive, exploitative behaviours to legal sanction and regulation. Potentially there is a message here for contemporary debates on prostitution regulation. Mill's approach may well offer a blend of radical and liberal feminism, possibly a welcome compromise for modern day feminists and lawmakers who continue to grapple with the challenge of regulating prostitution.

Conclusions

<32> What is evident from Mill's writings on prostitution and its regulation is his moral condemnation of the practice, but a rejection of the path followed by those of a similar moral persuasion, namely suppression, criminalization, and the denunciation of women prostitutes. Mill contested the unassailed prerogatives of men in the sexual arena, challenging assumptions about male sexual right. He demanded equality of treatment in whatever form regulation is adopted and

recognized that the phenomenon of prostitution shone a light on the poverty and destitution of the working classes more generally. He openly equivocated on key issues where he saw a potential conflict between his principles, worrying about the use of law to exploit those without resources or power and concerned to ensure the progressive development of individual character.

<33> These insights counter common assumptions about Mill, his liberalism generally, and his feminism specifically. Gail Tulloch argues that when Mill's thought is taken as a whole, and in particular when "The Subjection of Women" is given due weight, we can see that "Mill had a more positive conception of the role of the state and allowed more scope for government intervention than is commonly supposed" (Tulloch xvi). This is because his thinking is embedded in a rich conception of the good life and the promotion of "character" (Bellamy 22). The detailed analysis of Mill's thinking on prostitution presented in this essay, therefore, supports the argument that Mill was not as anti-regulation as is often suggested. Indeed, he clearly adhered to the idea of a public interest or public good that the state could and should protect. This is not to suggest that he was an ardent advocate of prostitution regulation, but that his thinking is more complex, more nuanced, and more equivocal on questions of regulation and liberty than is often assumed.

<34> And in relation to his feminist credentials, the conceptualization of Mill arising from this analysis is one that reveals his radical edge, his counter-hegemonic spirit. This supports the argument of Keith Burgess-Jackson who has suggested that "Mill's views on the social and legal status of women are more closely aligned with those of contemporary *radical* feminists than with those of contemporary liberal feminists" (Burgess-Jackson 72). Burgess-Jackson questions the assumptions made about Mill's liberal feminism, advocating a deeper analysis of his conceptualization of equality and explanations for women's unequal status. Indeed, it was radical feminist Kate Millet who, in one of the early second-wave feminist reviews of Mill, saw his radical potential, in particular his rejection of absolutist and biological explanations for women's disadvantaged status, for his recognition of the role of society in shaping women and men's expectations and on-going discrimination (Tulloch xiii). Similarly, Morales has demonstrated this radical potential in her analysis of Mill's activism, arguing that Mill characterized domestic violence as "crimes of sexual domination motivated and maintained by an oppressive sexual ethic" ("Rational Freedom" 47). Thus, while it is well known that Mill considered marriage and family life to be oppressive for women, far less is said either about the specific ways in which this domination manifested itself, or Mill's specific linking of such despotism to his condemnation of battery, marital rape, domestic violence, and child abuse ("Rational Freedom" 51; Tulloch 106).

<35> Tulloch has summarized Mill's feminism as follows: "Mill's critique of the status quo is radical, and his practical proposals reformist" (66-7). In essence, she argues, he failed to see that his demands for equality, for reform of marriage, and the development of character, would not of themselves be sufficient to create the egalitarian society that he envisioned. He shared this failing with feminist activists who also thought that gaining the suffrage would be the catalyst for significant changes in law and public policy to the betterment of women specifically and equality generally. For this reason, while Mill condemned the practice of prostitution, and the dominant approaches both to understanding its causes and proposals for regulation, he fell short of

recommending radical law reform not only on the basis of his liberty principles, but also because he envisaged a progressive change in society according to his ideas of character and public good. Mill was radical in his sentiments, though remaining liberal in his proscriptions for law reform. He is closer in his critique of prostitution, its causes and harms, to current radical feminist thinking, than to any of the various strands of liberal thinking. However, while his proscriptions were liberal, what we do not know is whether his views would have changed as it became clear that prostitution was not likely to disappear, even with the emergence of greater ideals of equality between women and men. If Mill had experienced the phenomenon of prostitution in its current form, would his radical sentiments have led to radical proscriptions for law reform?

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Endnotes

(1)References to Mill are all to the *Collected Works* as edited by John Robson and published by the University of Toronto, 1963-1991. The *Collected Works* is also available online at: http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Fperson=21&Itemid=28(^)

(2)Waldron similarly expressed surprise at the lack of analysis of Mill's approach to prostitution regulation, pointing out that "none of the copious literature on Mill's essay 'On Liberty' so much as mentions the relation between that essay and [Mill's] evidence against the Contagious Diseases Acts" (22).(^)

(3) In "The Subjection of Women" Mill stated that: "We can safely assert that the knowledge which men can acquire of women, even as they have been and are, without reference to what they might be, is wretchedly imperfect and superficial, and always will be so, until women themselves have told all that they have to tell" (*Collected Works* 21: 279).(^)

(4)At this time, there was little recognition of prostitution as a voluntary choice. Walkowitz suggests that when faced with arguments about voluntary prostitution and women prostitutes who did not want to be "saved," feminist campaigners became "morally indignant" (137).(^)

(5)For a discussion of this approach, see the work of Abel, Fitzgerald, Healy, and Taylor, and of Brooks-Gordon.(^)

(6)The radical feminist approach to prostitution regulation is discussed in the work of Farley and of Jeffreys.(^)

(7)Therefore, while moral conservatives also wish to abolish prostitution on moral grounds, the means to achieve this end result significantly differ, as does the explanation for the existence of

prostitution. While Mill and radical feminists underline the role of male demand, moral conservatives largely target their vitriol at the women who work as prostitutes, suggesting that prostitution is driven by supply, by women tempting men towards irreligious or immoral indulgences.(^)

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