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Women, Law and John Stuart Mill

Ian Ward and Clare McGlynn*

Abstract

John Stuart Mill's intellectual reputation is unarguable; his liberal credentials seemingly impeccable. Moreover there seems to be a Mill for everyone; liberal, radical, feminist. The precise nature of the feminist Mill has however remained a matter of considerable debate. The purpose of this article is less to engage this speculation, but rather to invite closer consideration of what Mill actually said and wrote about women and the law in nineteenth century England. For Mill, the law was both an instrument of women's subjection and a prospective means of liberation.

Key Words

Mill – feminism – law – prostitution – suffrage

Article

John Stuart Mill's intellectual reputation is unarguable; his liberal credentials seemingly impeccable. Moreover there seems to be a Mill for everyone; a liberal Mill rather obviously, but also a conservative Mill, an ethical, even morally dogmatic Mill, an egalitarian and socialist Mill and a radical Mill, as well as a number of feminist Mills.¹ It is the latter which is our chief concern. Critics have long supposed Mill to be some kind of feminist, his treatise *The Subjection of Women* constituting one of the 'landmarks' of modern feminism.² He certainly wrote a great deal about the place of women in nineteenth century England. And campaigned on their behalf: 'ardent and activist', as Susan Moller Okin concludes; a tireless campaigner inside and outside Parliament, on paper and on the street.³ Few argue against the

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¹ As Richard Reeves observes in his recent biography of Mill, his subject 'has been claimed, and continues to be claimed, by pretty much everyone'. See his (2007) *John Stuart Mill: Victorian Firebrand*, (London: Atlantic Books) p.8. Maria Morales identifies 'the individualist, the classical liberal, the socialist, the classical utilitarian, the positivist, the elitist, the egalitarian, the pragmatic humanist, and the democrat bent on overthrowing privilege and oppression', to which might be added a whole host of further Mills identified in the critical literature including the ethical, the radical libertarian and of course the feminist, liberal and radical: see Maria Morales, 'Introduction', in Maria Morales (ed.) (2005) *Mill's The Subjection of Women: critical essays*, (Oxford: Rowman and Littlefield), p.xvi. An alternative list is presented by John Gibbins in his 'JS Mill, liberalism and progress', in Richard Bellamy (ed) *Victorian Liberalism – nineteenth century political thought and practice* (1990) at 91, referring to 'the old and New Liberal, the conservative, the co-operative socialist, the democrat, the elitist, the libertine and the authoritarian'. The morally 'dogmatic' Mill was famously presented by Maurice Cowling in his (1990) *Mill and Liberalism*, (Cambridge: Cambridge University Press), at p.ii.

² See Alice Rossi, 'Sentiment and Intellect: The Story of John Stuart Mill's *The Subjection of Women*', in Rossi (ed.) (1970) *Essays on Sexual Equality*, (Chicago: Chicago University Press), p.4.

³ Susan Moller Okin, 'John Stuart Mill's Feminism – *The Subjection of Women* and the Improvement of Mankind', in Morales, *Critical Essays*, at p.25.

iconic status of Mill's *Subjection*, even if some such as Gertrude Himmelfarb refer to it as a text more commonly 'invoked than read'.⁴

But precisely what kind of feminist Mill might have been remains a matter of contention. Critics have tended to prefer two alternatives, a liberal and a radical. The former kind of Mill is celebrated by the likes of Gertrude Himmelfarb, Zillah Eisenstein and Rosemarie Tong who situates her subject as the 'paradigmatic liberal feminist'.⁵ This liberal Mill, as Himmelfarb suggests, might have 'liked' to have 'put the procurer or keeper of a gambling house out of business, but he could not bring himself to do so without imperilling his basic principle' of liberty.⁶ The liberal Mill is, of course, commonly associated with the passage in the Preface to his 1859 essay *On Liberty* in which could be found the 'harm principle':

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against their will, is to prevent harm to others.⁷

As Richard Bellamy has suggested, the harm principle, and the essay in which it is found, is commonly read as a 'paradigmatic statement of the liberal tradition'.⁸ This is true. But this does not mean to say that the reading is infallible. The principle was never intended to be absolute, or even particularly prescriptive. In the very following sentence Mill confirms that it is 'hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties'. The 'doctrine' is contingent and qualified; applying in certain circumstances, but not in others. Mill's most recent biographer has gone so far as to suggest that the 'harm principle' is 'essentially a side-show' found in a book which is anyway, for reason of its interpretative malleability, thoroughly 'dangerous'.⁹ Such an extreme denunciation may be unusual. But it is certainly true that more recent scholarship has tended to move away from the classical libertarianism which characterised so much early twentieth century Mill criticism.¹⁰

The radical Mill preferred by some feminist critics is more commonly aligned with an egalitarian Mill; the later Mill who wrote the second edition of *The Principles of Political Economy*, the essay on *Social Freedom*, published posthumously in 1907, and perhaps most importantly many of his various essays and speeches on the 'question' of women. It is this

⁴ Gertrude Himmelfarb, (1974) *On Liberty and Liberalism* (New York: Alfred Knopf) at p.173-4.

⁵ See Rosemarie Tong (2008) *Feminist Thought* (Boulder: Westview Press) p.13, and Zilla Eisenstein (1986) *The Radical Future of Liberal Feminism*, (Boston: Northeastern University Press), p.127.

⁶ Himmelfarb, *On Liberty*, p.319.

⁷ CW vol.18, pp.223-4. Quotations from Mill are all referenced via his *Collected Works* (CW) as edited by John Robson and published by the University of Toronto, 1963-1991. The *Collected Works* are also available online at: http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Fperson=21&Itemid=28

⁸ See Richard Bellamy (1992) *Liberalism and Modern Society – an historical argument* (Cambridge: Polity Press), p.22 and also Reeves, *Mill*, at p.264, saying 'love it or loathe it *On Liberty* is the New Testament of liberalism'.

⁹ Reeves, *Mill*, pp.263, 268.

¹⁰ See, for example, Raphael Cohen-Almagor (2012) 'Between Autonomy and State Regulation: JS Mill's Elastic Paternalism', *Philosophy*, 87, pp.557-82, suggesting that Mill deploys alternative 'hard' and 'soft' varieties of paternalism in defence of wide range of state activity.

Mill who is recommended by the likes of Keith Burgess-Jackson and Maria Morales who argues that a 'substantive relational ideal' underpins Mill's pursuit of 'perfect equality'.¹¹ In similar terms, Gail Tulloch commends a Mill who appreciates the limits of formal equality and the consequential need for substantive 'practical proposals'.¹² There again, as Gertrude Himmelfarb has argued, the line between equality and liberty should not be drawn too brightly. There is much in the libertarian Mill which accommodates the egalitarian. Most notably, there is the strategic appreciation that the emancipation of women might serve to promote a broader instantiation of social equality and emancipation.¹³ It is the same accommodation which leads Martha Nussbaum to suggest that, as a consequence, Mill may have been the 'first great radical feminist in the Western philosophical tradition'.¹⁴

The purpose of this article is not to engage, at least directly, with this critical context. It is not concerned with sequestering Mill for any particular modern debate or campaign. It is rather to invite closer consideration of what Mill actually said and wrote about women and the law in nineteenth century England, focusing not just on those areas in which Mill's critical reputation is already established, such as marriage and suffrage reform, but also on those which have escaped the same degree of critical attention, such as domestic abuse and prostitution. This is not a simple task, not least because he wrote so much, both in public and in private. And there is context too. Mill wrote at a particular moment in English legal history, one that historians like to term an 'age of reform'. The moment stimulated him. It also sharpened his strategic awareness. Mill was a shrewd writer, ever-sensitive to his audience, parliamentary or public.¹⁵ And his opinions changed, in part a result of altered personal circumstance and in part a consequence of shifting public interest and opinion. Different pieces of legislation came and went, as did different women's organisations. Victorian feminism was nascent and febrile. Its energies waxed and waned, its attention drifted. And different feminists thought different things too, often as a consequence of the same shifting contexts.¹⁶ A 'public man' first, a philosophical speculator second, Mill was susceptible to all of this.¹⁷ As we will see, most of what he wrote was responsive, especially in relation to women. Thus, in regard to the 'question of women' and, particularly, the place of law in its determination, Mill was animated by those issues which likewise animated his contemporaries; marriage and divorce, domestic abuse, prostitution, the vote. He did not,

¹¹ Maria Morales, 'The Corrupting Influence of Power' in Morales, *Subjection*, p.100, and also Keith Burgess-Jackson, 'John Stuart Mill, Radical Feminist', in Morales, *Subjection*, pp.84-7.

¹² Gail Tulloch (1989) *Mill and Sexual Equality* (Harvester Wheatsheaf: Hemel Hempstead, 1989), p.xvi. For similar sentiments, see Hollie Mann and Jeff Spinner-Halev (2010) 'John Stuart Mill's Feminism: On Progress, the State, and the Path to Justice' *Polity* 42, p.256.

¹³ Himmelfarb, *On Liberty*, p.181.

¹⁴ Nussbaum is quoted in Reeves, *Mill*, p.414.

¹⁵ For which reason, Reeves suggests, he kept many of his views on women 'mostly under wraps'. See *ibid*, 435, and also Keith Burgess Jackson making much the same point in his 'Radical Feminist', at p.73, Elizabeth Smith (2001) 'John Stuart Mill's *The Subjection of Women*: A Re-examination' *Polity*, 34, pp.195-6, 201, and also Tulloch, *Mill*, p.116, emphasising the same, that Mill 'was no salon liberal but a realistic and pragmatic activist'.

¹⁶ See here Barbara Cain (1992) *Victorian Feminists*, (Oxford: Oxford University Press, particularly pp.33-42.

¹⁷ See here Mariana Szapuova (2006) 'Mill's Liberal Feminism: Its Legacy and Current Criticism' *Prolegomena*, 55, p.180.

conversely, engage in matters which, though significant in modern feminist debate, failed to register so much in mid-Victorian England. In such cases, we are left to speculate.¹⁸ Context is here determinative; for which reason before we revisit what Mill actually wrote, we must first contemplate the milieu in which he wrote.

Mill in his Milieu

Whether or not Mill seems quite so radical today, he was certainly perceived to be so by his contemporaries: arrested for distributing birth control pamphlets at seventeen, before graduating into a lifetime of cajoling suffrage committees, chastising fellow parliamentarians and horrifying Royal Commissioners.¹⁹ And of course writer of essays and treatises which, in the perception of many, threatened to bring western civilization to its knees.²⁰ According to one critic, *Subjection* in particular was a work of 'rank moral and social anarchy', of which the 'practical application would be as injurious as its theory is false'.²¹ *Blackwood's* concluded that the author of *Subjection* 'corresponds to the lunatic who proved logically that all the rest of the world was insane'.²² In his *Liberty, Equality, Fraternity*, James Fitzjames Stephen famously declared that the same thoroughly 'unpleasant' essay was 'a work from which I dissent from the first sentence to the last'.²³ Of course Mill wrote about many subjects. But few occupied more of his time at the writing-desk than the 'question' of women. Regular correspondents here included the Fawcetts, Henry Crabbe Robinson and Florence Nightingale, as well as radical Parliamentarian allies such as Charles Bradlaugh and Sir Charles Dilke. More irregular were the dozens of chairs of local suffrage societies who wrote extending invitations to give lectures or asking for advice on how best to compose parliamentary petitions. Here again context provided the immediate stimulus. Whilst earlier correspondence tended to be more personal and reflective, the later is focused on statutory reforms such as the 1858 Divorce Act and the 1867 Reform Act, for which reason it reads as being rather more strategic, though sometimes rather more irascible too. By the end of the 1860s, Mill was no longer simply articulating his own preferences and prejudices; he was shaping a revolutionary movement.

Except that he was, of course, still articulating his own prejudices. An evident dislike of 'pushing' women, a subject to which he constantly eludes in correspondence during the late 1860s and early 1870s, is here instructive for two reasons. A first is again to do with strategy.

¹⁸ Most commonly in relation to pornography. While Mill did not express a view on this subject, he is commonly invoked in contemporary debates. For our own speculations in this regard, see Clare McGlynn and Ian Ward (2014) 'Would John Stuart Mill have Regulated Pornography?' *Journal of Law and Society*, 41, pp.500-22.

¹⁹ Richard Reeves opens his recent biography of Mill with an account of his distributing birth control pamphlets and his subsequent prosecution before the local magistrates. Mill was just seventeen and was, it seems, motivated by the experience of finding the corpse of an abandoned, and apparently murdered, baby in St James Park. See Reeves, *Mill*, pp.1-2.

²⁰ See David Brink (2013) *Mill's Progressive Principles* (Oxford: Oxford University Press), p.261, concluding that read in context, Mill's *Subjection* remains 'radical, courageous, even eloquent'.

²¹ Quoted in Susan Mendus, 'The Marriage of True Minds – the Ideal of Marriage in the Philosophy of John Stuart Mill', in Morales, *Subjection*, at p.134.

²² Quoted in Smith, 'Re-examination', p.202.

²³ In Moller Okin, 'Feminism', at p.43 and Mary Shanley, 'Marital Slavery and Friendship: John Stuart Mill's *The Subjection of Women*', in Morales, *Subjection*, at 119.

Mill feared that certain 'pushing' women and likeminded 'vulgar self-seekers' would derail the suffrage campaign by applying some of the more 'common vulgar motives and tactics' which had become familiar in the campaign to repeal the Contagious Diseases Acts which sought to regulate prostitution.²⁴ Mill was a supporter of the latter campaign, as we shall see. But he was also convinced that suffrage, much the larger issue in his mind, required more strategic management. Too radical actions would be 'simply suicidal'.²⁵ Repeal of the Contagious Diseases Acts might be achieved by the simpler matter of irritating certain law officers and Parliamentarians. Securing the suffrage required the gentler persuasion of a nation. The second reason relates to something rather less calculating; for the very same correspondence also betrays something more visceral; personal animosity, and perhaps an element of paranoia too. His increasingly agitated correspondence regarding Caroline Ashurst Biggs, who served as Secretary of the London National Suffrage Society in 1869 and 1870, and her 'obnoxious set' of supporters, borders on the obsessive.²⁶

It was not the only visceral prejudice which coloured Mill's engagement with the 'question' of women. There is nothing especially unusual in the fact that Mill's perception of sexual activity was conflicted and troubled. Many of his contemporaries were just as troubled. But in Mill's case there is again a sense of obsessive anxiety.²⁷ At root, he was concerned by the fact that sex seemed to make many people happy, but in all the wrong ways. The achievement of happiness was, of course, the very essence of utilitarian philosophy. But it was a certain kind of happiness, the improving kind, the kind realised by the 'pleasures of the intellect' that must be sought.²⁸ It was certainly not the kind of happiness achieved in the transient satisfaction of sexual lust. As he confirmed in his 1863 essay *Utilitarianism*, a 'beast's pleasures do not satisfy a human being's conception of happiness'.²⁹

²⁴ CW vol.17, pp.1742-3, 1843. The same argument is urged in later correspondence with Croom Robertson at 1846.

²⁵ CW vol.17, p.1854.

²⁶ See for example CW vol.17, pp.1823-5, and also pp.1834-6, seeking to engineer a 'breach' which would bring the matter of strategic direction, and Caroline's Secretaryship, to a head, and then again 1842-3, expressing 'much astonishment' that the Committee had resisted the idea of pursuing a vote of censure. The tirade against the 'obnoxious set' can be found in later correspondence at 1849, as can a suggestively long letter to Croom Robertson in which Mill conjectures the likely support of each and every Committee member, categorised, at 1850-1, into the 'Certain', the 'Uncertain', and the 'Perhaps hostile'. Ironically Caroline had originally been persuaded to become more actively involved in the Society by Mill's daughter Helen, who had played a significant part in establishing the London 'National' Society. The fact that Caroline's brother-in-law was also serving as Treasurer of the Society during this period was clearly an added source of agitation to Mill. Caroline was one of five siblings of the radical lawyer William Ashurst. All were activist. Caroline was also a leading light in the Ladies London Emancipation Society and St Mary's Dispensary for Women and Children. She married James Stansfield, another wealthy radical lawyer, friend of Cobden and Giuseppe Mazzini, both of whom were regular house guests. As the correspondence reveals, for a while Henry Crabbe Robinson tried to broker some kind of accommodation between Mill and Biggs. In the end he gave up. Mill had his way and Biggs resigned her Secretaryship, taking a number of supporters with her. Mill's daughter Helen took her place. A few years later however Caroline was back in office where she remained until 1883. For a commentary on the tension that developed between the Mills and the London National Society, and its consequences, see Barbara Caine (1978) 'John Stuart Mill and the English Women's Movement', *Historical Studies*, 18, pp.52-67.

²⁷ Susan Mendus refers to Mill's 'deep-rooted prejudices on the subject of sexuality', in 'True Minds', at p.137.

²⁸ And the 'elitist' kind, as Susan Moller Okin observes. See her 'Feminism', p.32, and also Cohen-Almagor, 'Autonomy', pp.575-6.

²⁹ *Utilitarianism*, CW vol X, at pp. 210-211.

One of the defining characteristics of the 'higher' minded was an ability to rise above the 'animal passions'. The achievement of this particular elevation was the mark of 'civilization'.³⁰ A journal entry for April 1854 reads: 'I am anxious to leave on record at least in this place my deliberate opinion that any great improvement in human life is not to be looked for so long as the animal instinct of sex occupies the absurdly disproportionate place it does therein'.³¹ The ability to rise above the baser passions was all part of what defined the 'character' of the upstanding middle-class Victorian.³² And the day would come, as indeed it was fast approaching, when this 'particular passion' would come 'completely under the control of reason'.³³ This might all seem rather fanciful today; but the prejudices matter, not least because what he felt inevitably shaded what he wrote.

Again there is nothing surprising in the fact that Mill shared a number of contemporary prejudices in regard to sexual activity. It would only have been odd if he had not. And the same can be said of various other prejudices, each of which he sought to intellectualise, but each of which was at root as much a matter of simple moral preference. He took, for example, just as dim a view of gambling and drunkenness as he did lust and prostitution. In *On Liberty* he quoted approvingly from the manifesto of the Alliance for the Legislative Suppression of the Traffic in All Intoxicating Liquors in Britain. 'I claim, as a citizen, a right to legislate whenever my social rights are invaded by another', he wrote, continuing: 'If anything invades my social rights, certainly the traffic in strong drink does. It destroys my primary right to security, by constantly creating and sustaining social disorder'.³⁴ As he had already argued in his earlier essay on Coleridge the state has a responsibility to 'beneficially employ its powers' where it could better promote 'the public welfare'.³⁵ Here again it is important to remember that Mill was a pragmatist, a campaigner first and a philosopher second. He pondered the possibilities of 'perfectibility'. He thought about what might improve his fellow mid-Victorians and what might not. He concluded, as we shall see, that reform of the matrimonial law would improve marriage, that repeal of the Contagious Diseases Acts would restrain the 'license' of 'animal passions', and that granting the vote to women would make England a better place in which to live, not just for women but for men, and probably a better governed place too. Each resolution could be defended in terms of principle, of liberty and equality. But more importantly each could be defended in terms of utility: each would work.

A happy consequence of his active engagement with these various causes was Mill's association with his future wife Harriet Taylor.³⁶ They had first met in 1830 when Harriet and

³⁰ CW vol.2, p.367. In an unpublished essay entitled 'On Marriage', Mill emphasised once again that 'all the difficulties of morality... grow out of the conflict which continually arises between the highest morality and even the best popular morality'. See CW vol.21, p.39.

³¹ CW vol.27, p.664.

³² See Bellamy, *Liberalism*, pp.132-4.

³³ Mill made the assertion in correspondence with Lord Amberley on the subject of the Contagious Diseases Act and the campaign for their repeal in 1870. CW vol.17, p.1693.

³⁴ CW vol.18, p.298.

³⁵ See his comments in his essay on Coleridge, in CW vol.10, p.156.

³⁶ Later in his *Autobiography*, Mill paid loving, and extensive, tribute to the woman whose 'friendship has been the honour and chief blessing of my existence'. CW vol.1, p.93.

her then husband John invited Mill to one of their dinner parties.³⁷ By 1833 there were rumours. There was also a lot of correspondence, some personal, much addressing the so-called 'question of women' and more particularly the institution of marriage. By the latter part of the 1840s they were composing essays and papers together, and had settled into what Mill termed a state of 'imperfect companionship'.³⁸ The spring of 1839 was spent holidaying in Italy together, along with Harriet's daughter Lily. John Taylor stayed in England, ostensibly to look after some decorating. It was hardly likely that the rumours would be abated, and they were not. Indeed, it was insinuated, not least by Radicals horrified by disparaging comments they encountered in Mill's 1838 essay on Bentham, that Harriet's influence had begun to corrupt John Stuart's writings as well as his morals.³⁹ There is certainly no doubting that Harriet exerted a considerable intellectual influence on Mill; though precisely how considerable remains moot.⁴⁰ In his *Autobiography*, Mill later admitted that *On Liberty* 'was more directly and literally our joint production than anything else which bears my mind, for there was not a sentence of it that was not several times gone through by us together, turned over in many ways, and carefully weeded out of any faults, either in thought or expression, that we detected in it'.⁴¹ There is a necessary poignancy here. Harriet died in November 1858, as Mill was putting the final touches to *On Liberty*. It was dedicated to her memory.⁴²

After *On Liberty* he turned to completing *Subjection* which was finished by the middle of 1861. In many ways, *On Liberty* and *Subjection* might seem to be very different texts. Yet they can be read as complementary, not least because Harriet's imprint is so evident in both.⁴³ In laudatory comments prefaced to the republication of his 1851 essay on the *Enfranchisement of Women*, Mill paid tribute to his recently deceased wife, Harriet Taylor Mill, as the real author.⁴⁴ The following 'essay is hers in a peculiar sense, my share in it being little more than that of an editor or amanuensis'; a testament that assumes greater import when the immediate comparisons between the arguments found in it and in the *Subjection* are

³⁷ John was a wealthy pharmacist and supporter of radical causes, 'an innocent dull good man' according to Carlyle, who also reported that their marriage was happy. See Reeves, *Mill*, p.81.

³⁸ As opposed to a perfect state of companionship which was, of course, marriage. The essays, including reciprocal commentaries on marriage, are reprinted in CW vol.21 at pp.375-92. Later commentators have liked to surmise whether John Stuart and Harriet actually engaged in sexual intercourse before their marriage. It can only be surmise. See Reeves, *Mill*, pp.138-9, 150-3, and Rossi, 'Sentiment', pp.28-9.

³⁹ See here Rossi, *ibid*, pp.35-9.

⁴⁰ In a letter of April 1854 Mill can be found asking 'my angel to tell me what should be the next essay written'. How genuinely the plea was felt must remain a matter of conjecture. See CW vol.14, p.197.

⁴¹ CW vol.1, pp.257-8. The sentiment is reinforced by correspondence from January 1855 in which Mill confirms to Harriet that he is 'able & disposed to write a very good volume on Liberty, if we decide that that is to be the subject'. CW vol.14, p.300.

⁴² In his *Autobiography*, Mill confirmed that in the months following Harriet's death he was driven by a determination to publish the essay and 'consecrate it to her memory'. CW vol.1, p.261

⁴³ See here Smith, 'Re-examination', pp.191-2, and also Himmelfarb, *On Liberty*, pp.207, observing that it is 'not surprising' that 'the question of women should have intruded upon his thought more persistently and profoundly during the period of their marriage – which was also the period when Mill was writing and rewriting *On Liberty*'.

⁴⁴ See here Moller Okin, 'Feminism', pp.29-30, and also Rossi, 'Sentiment', p.41, concluding that Harriet was indeed the 'primary', perhaps even the sole, author of the *Enfranchisement*.

realised.⁴⁵ Her influence was also more general, with Mill describing the 'wise scepticism' which Harriet brought to his writing.⁴⁶

Without diminishing his radicalism or his libertarianism, Harriet was a particular influence in at least three important ways. First, she nurtured a particular focus on the 'subjection' of women. Secondly, she tightened the focus still further, so that the real issue was the state of marriage law and the urgent need for its reform. At one point in an essay, Harriet pauses, in parentheses, to declare: 'I feel like a lawyer in talking of it only!'⁴⁷ And, thirdly, she concentrated Mill's mind on the relation of equality with liberty, and again more specifically still on the issue of female suffrage; an inference further confirmed by the sentiments written into the prefatory comments to the republished version of his 1851 essay on the *Enfranchisement of Women*. In sum, it might be argued, she radicalised Mill.⁴⁸

As a consequence, it might be further conjectured that Harriet also firmed up Mill's sense of mission, his determination to apply conceptual insight to practical problems.⁴⁹ And none was perhaps larger, in either John Stuart's mind, or Harriet's, than the relation between state and citizen. As we shall see in the following sections, the question of state regulation loomed large in much of what Mill wrote. It animated, very obviously, the 'harm principle'. It did not however, as we have already intimated, preclude the possibility, where appropriate, of state intervention. As David Dyzenhaus has argued, the 'harm principle' can be just as readily deployed to justify legislation, in order to protect the 'interests' of individuals.⁵⁰ Thus, whilst the principle is commonly cherished by libertarian advocates of free expression, for example, it might be surmised that Mill would have placed a number of conditions around the practical exercise of this particular liberty; most obviously those of responsibility.⁵¹ So much is a matter for speculation. But it might also be noted that Mill elsewhere affirmed that 'liberty is often granted where it should be withheld, as well as withheld where it should be granted'⁵²; emphasising to an audience of campaigners for women's suffrage in 1870 that the 'favourite sins' of government 'are indolence and indifference'.⁵³ Mill never doubted the place of law and government in the shaping of society. The question was simply one of efficacy and extent.

On Marriage and 'Domestic Tyranny'

⁴⁵ Rossi, *ibid*, p.41,

⁴⁶ CW vol.1, p.196-7.

⁴⁷ CW vol.21, p. 376.

⁴⁸ For this supposition see Rossi, 'Sentiment', p.22, and also Richard Reeves who suggests that Harriet's 'presence can be felt on almost every page of *Subjection*'. He also suggests that she 'unquestionably sharpened' Mill's egalitarian and socialist sympathies, for which reason he further suggests that her influence on Mill's *Principles of Political Economy* should not be underestimated either. See Reeves, *Mill*, pp.213, 439. Stefan Collini agrees, in rather more pejorative tones, concluding that 'any complete account of Mill's thinking would have to come to terms with the role of this very clever, imaginative, passionate, intense, imperious, paranoid, unpleasant woman'. See his 'Introduction' to CW vol.21, p. xxx.

⁴⁹ Himmelfarb, *On Liberty*, pp.318-19.

⁵⁰ David Dyzenhaus (1992) 'John Stuart Mill and the Harm of Pornography' *Ethics*, 102, p.545.

⁵¹ See here Reeves, *Mill*, pp.269-70, and also LW Sumner, 'Criminalizing hate speech and obscenity', in John Deigh and David Dolinko (eds) (2011) *The Oxford Handbook of the Philosophy of Criminal Law* (Oxford: Oxford University Press), p.18.

⁵² CW vol XVIII, at p.302.

⁵³ CW vol.XXIX, at p.387.

While *The Subjection of Women* was primarily written as a commentary on marriage and matrimonial property law, readers of *On Liberty* would have anticipated the line that Mill would take. The 'almost despotic power of husbands over wives', he had written in 1859, 'need not be enlarged upon here, because nothing is more needed for the complete removal of the evil, than that wives should have the same rights, and should receive the protection of law in the same manner as all other persons'.⁵⁴ It was a view which had been evidently shaped during Mill's correspondence with Harriet during the 1830s and 1840s. It was not, as this correspondence reveals, merely a matter of reforming marriage for its own sake:

The question is not what marriage ought to be, but a far wider question, what women ought to be. Settle that first, and the other will settle itself. Determine whether marriage is to be a relation between two equal beings, or between a superior and an inferior, between a protector and a dependent, and all other doubts will be easily solved.⁵⁵

It was such views which he developed in *Subjection*, particularly his conception of equality. At the very outset of *Subjection* Mill outlined:

That the principle which regulates the existing social relations between the sexes – the legal subordination of one sex to the other – is wrong in itself, and now one of the chief hindrances to human improvement; 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.⁵⁶

It was not, however, the idea of marriage which troubled Mill. He married himself. John Taylor having died in 1849, John Stuart and Harriet married in April 1851. As he made plain in his unpublished *Statement on Marriage*, dated a few weeks before his marriage, it was the consequences of the 'marriage relation as constituted by law' that bothered Mill. Later in *Subjection*, Mill presented an alternative 'ideal' marriage, a marriage of 'true minds' based on the improvement of 'moral sentiments'.⁵⁷ The idea of 'companionate' marriage, which had been ventured in the literature since the mid-eighteenth century, had a kind of utilitarian resonance.⁵⁸ A companionate marriage was supposed to be a happier marriage, and in order to achieve this, matrimonial law would have to be reformed; to recalibrate 'existing social relations between the sexes', to replace the 'legal subordination of one sex to other' with an alternative 'principle of perfect equality'.⁵⁹ While this sounds ideal, Mill's 'ideal' marriage has troubled some later feminist critics. Susan Mendus finds it 'deeply depressing and distorted'.⁶⁰ The idea of a companionate marriage of 'true minds' is fine. But there are a lot

⁵⁴ CW vol.18, p.301.

⁵⁵ CW vol.21, p.45.

⁵⁶ CW vol.21, p.261.

⁵⁷ CW vol.21, pp.292-5.

⁵⁸ See James Hammerton (1992) *Cruelty and Companionship: Conflict in Nineteenth Century Married Life*, (London: Routledge), pp.4-5, 123-6, and also Szapuova, 'Feminism', p.184, stressing the place of utilitarianism in Mill's writings about women and the institution of marriage.

⁵⁹ CW vol.21, pp.261, 293.

⁶⁰ See Mendus, 'True Minds', p.137, and p.149, conjecturing that Mill perceived his marriage to Harriet as confirming the 'perfectibility' of a marriage of 'true minds'.

of collateral assumptions that seem rather too familiar, not least of which is the assumption that once married, women should stay at home and do the baking; a division of labour which Mill justifies as being the most 'suitable'.⁶¹

Notwithstanding his acceptance of 'separate spheres' in the marital home, Mill famously drew a parallel between the legal condition of married women and that of slaves: 'Marriage is the only actual bondage known to our law. There remain no legal slaves, except the mistress of every house'.⁶² The allusion was intended to shock, and it did.⁶³ English matrimonial law, Mill declared, is a 'law of servitude', a 'monstrous contradiction to all the principles of the modern world'. The wife 'is the actual bondservant of her husband no less so, as far as legal obligation goes, than slaves commonly so called'.⁶⁴ Except, Mill pointedly infers, there are no longer any slaves in England. And so 'the disabilities', therefore, 'to which woman are subject from the mere fact of their birth, are the solitary examples of the kind in modern legislation'.⁶⁵ And indeed, their condition is actually worse than that of slaves, for there is no possibility of 'peculium', and moreover no legal power to resist their sexual violation. For 'however brutal a tyrant she may unfortunately be chained to' and 'though she may feel it impossible not to loathe him – he can claim from her and enforce the lowest degradation of a human being, that of being made the instrument of an animal function contrary to her inclination'.⁶⁶ Plainly put, the law condoned marital rape.⁶⁷

It is the law then which renders the married woman a slave. But reform of the law is not the only mechanism for making marriages happy. Reform of cultural expectations is another. The 'moral sentiments' would not improve themselves. The legal subordination of women is a customary prejudice, an 'eminently artificial thing', the 'relic of an old world of thought' which presumed women to possess inferior mental and physical capabilities.⁶⁸ And whilst in the age of 'progression' the 'condition of women has been approaching nearer to equality with men', the same prejudices retained a place in the 'silly' poetics of 'loving submission' which celebrated the 'angel in the house'.⁶⁹ It was, as we shall see, the same poetic that militated against the idea that women should seek to engage in public life, or even be permitted to vote for others who might.

Better education might also make for 'better' marriages. Intended spouses would be more circumspect. As Harriet, who had first married aged just eighteen, commented, 'In the present system of habits and opinions, girls enter into what is called a contract perfectly ignorant of

⁶¹ CW vol.2, p.178.

⁶² CW vol.21, p.323.

⁶³ In correspondence with the sympathetic Croom Robertson, who had nevertheless felt moved to remark on the allusion, Mill stated that: 'The comparison of women to slaves was of course not intended to run on all fours. I thought the differences too obvious to need stating & that the fundamental resemblances were what required to be insisted on'. CW vol.17, p.1635.

⁶⁴ CW vol. 21, p.284.

⁶⁵ CW vol.21, p.275.

⁶⁶ CW vol.21, p.285.

⁶⁷ See his reaffirmation of this position in an unpublished essay entitled 'On Marriage', in CW vol.21, p.40.

⁶⁸ CW vol.21, pp.275-6.

⁶⁹ CW vol.21, pp.276, 287.

the conditions of it, and that they should be so is considered absolutely essential to their fitness for it'.⁷⁰ Mill agreed entirely. 'Of all the more serious acts of the life of a human being' there 'is not one which is commonly performed with so little of forethought and consideration, and which is irrevocable'.⁷¹ Lack of thought and education was one problem. Lack of money was another. It was not just a matter of making sure that intending couples had enough money to marry. So too should they be obliged to evidence sufficient funds to bring up children. Producing children without having the necessary resources to feed them, Mill opined in *On Liberty*, was a 'moral crime, both against the unfortunate offspring and against society'.⁷² There is nothing odd in advancing the opinion that engaged parties might be better informed of their legal responsibilities. Rather odder perhaps is the argument that they should be first assessed as to their financial capabilities; except that in making this recommendation Mill was merely approving similar practices observed elsewhere in Europe, at which point the idea only seems odd insofar as it offends modern sensibilities. From the perspective of a nineteenth century utilitarian, it could be regarded as an entirely sensible caution. The same might be said of the suggestion that families might be limited in the number of children they were permitted. Mill had read Malthus and was worried. Such a measure was 'absolutely necessary to place human life on its proper footing, even if there were subsistence for any number that could be produced'.⁷³

Whilst none of these proposals ever came close to the statute book, Mill did witness the passage of two significant pieces of matrimonial legislation. The first was the 1858 Divorce Act. The second, at the very end of his life, was the 1870 Matrimonial Property Act. Neither was intended to enhance the prospect of an 'ideal' marriage. On the contrary, the primary purpose of the former, and a secondary purpose of the latter, was to deal with the consequences of an unhappy one. Mill supported both on these terms. He supported the 1858 Act because, despite its evident deficiencies in regard to child custody provisions, making adequate financial provision, and the notorious inconsistency in regard to securing grounds for divorce, it still provided a means by which an abused wife might, in theory at least, escape a violent marriage.

In an unpublished essay drafted before 1858, Mill had identified the apparent 'indissolubility of marriage' as the 'keystone' of female subjugation.⁷⁴ In his perception, the 'question' of marriage was inextricably tied to that of domestic violence. Even the happiest of marriages insinuated a culture of 'submission and yielding'.⁷⁵ Some of course preferred to keep such abuse behind closed doors and out of sight. 'There are private histories belonging to every family', the doyenne of Victorian domestic handbooks Sarah Stickney Ellis gravely advised, 'which, though they operate powerfully upon individual happiness, ought never to be named

⁷⁰ CW vol.21, p.376.

⁷¹ A point made in his unpublished essay entitled 'On Marriage', written expressly in deference to Harriet's views. See CW vol.21, pp.41-2, 45.

⁷² CW vol.18, pp.302-4.

⁷³ CW vol.14, pp.88-9. See here Cohen-Almagor, 'Autonomy', pp.570-1.

⁷⁴ CW vol.21, p.42.

⁷⁵ CW vol.21, p.271.

beyond the home-circle'.⁷⁶ Others were less inhibited. Abused wives could be found across the Victorian literary canon, making clear to the reading public that abuse was commonplace; George Eliot's Janet Dempster, Thackeray's Clara Newcome; all the abused Bronte heroines, Helen Huntingdon, Millicent Hattersley, Isabel Linton, Bertha Mason, and all the Dickensian found in the pages of *Dombey and Son*, *The Old Curiosity Shop* and *Bleak House*, as well of course as perhaps the most famously beaten 'wife' of all, *Oliver Twist*'s Nancy Sikes.

Mill found the incidence of spousal violence horrifying and shameful, and was just as determined that his readers should too. As early as 1851 he was treating readers of the *Morning Chronicle* to accounts of recent wife-murder cases, with the scarcely veiled insinuation that the 'disgrace' did not rest solely with the perpetrators of such heinous deeds. It was the clear duty of Parliament to redress a patent failing in the 'criminal code' which permitted 'domestic tyrants' to 'perpetuate' their 'tyrannies' with the seeming approval of judges and juries across the length and breadth of the country.⁷⁷ Much of the second chapter of *Subjection* was given over to recounting incidences of the same 'domestic tyranny', and its larger consequences.⁷⁸ His fellow Parliamentarians were likewise left in no doubt. In his 1867 speech *On the Admission of Women to the Electoral Franchise*, Mill declared:

I should like to have a return laid annually before the House of the number of women who are annually beaten to death, kicked to death or trampled to death by their male protectors: and in the opposite column, the amount of sentences passed, in those cases in which the dastardly criminals did not get off altogether. I should also like to have, in a third column, the amount of property, the unlawful taking of which was, at the same sessions or assizes, by the same judge thought worthy of the same amount of punishment. We should then have an arithmetical estimate of the value set by a male legislature and male tribunals on the murder of a woman, often by torture continued through the years, which, if there is any shame in us, would make us hang our heads.⁷⁹

Moreover the abuse is not just physical, as Mill observed. It was the anticipation. So many married women lived in a 'chronic state of bribery and intimidation combined'.⁸⁰ And it was of course this same intimidation which militated against women reporting their abuse. 'There is never any want of women who complain of ill usage by their husbands', Mill suggested, and there 'would be infinitely more, if complaint were not the greatest of all provocations to a repetition and increase of ill usage'. He continued:

Accordingly wives, even in the most extreme and protracted cases of bodily ill usage, hardly ever dare avail themselves of the laws made for their protection: and if, in a moment of irrepressible indignation, or by the interference of neighbours, they are

⁷⁶ In Karen Chase and Michael Levenson (2000) *The Spectacle of Intimacy: A Public Life for the Victorian Family*, (Princeton: Princeton University Press), p.12.

⁷⁷ CW vol.25, pp.1183-6.

⁷⁸ CW vol.21, pp.288-9.

⁷⁹ CW vol.28, pp.158-9.

⁸⁰ CW vol.21, p.268.

induced to do so, their whole effort afterwards is to disclose as little as they can, and to beg off their tyrant from his merited chastisement.⁸¹

Abused wives had no credible recourse in criminal law or in matrimonial law as it stood before the 1858 Divorce Act. It was for this reason that Mill supported various bills intended to toughen criminal penalties against convicted abusers; to an extent which might again seem discomfiting to the modern liberal reader. In an essay written in support of a proposed 'Bill for the Better Prevention and Punishment of Assaults on Women and Children', enacted in 1853, Mill expressed his entire support for increased fines. In addition, however, he suggested that the introduction of 'corporal' punishment, 'prompt and certain', was 'peculiarly fitted' and far more likely to be efficacious. Not only might it deter the beater from beating again, but as a salutary 'instrument' of 'moral education', it might equally deter others similarly tempted.⁸²

It was for these reasons that Mill supported the Divorce Act, despite its inherent inequalities in regard to securing grounds for separation and adequate maintenance. And it was because the deficiencies of the 1858 Act became all too obvious in the years which followed that Mill continued to campaign for further reform of England's marriage laws. And, indeed, its constitutional laws, for it would only be when women secured the vote, he later opined in his 1871 address to an Edinburgh audience of suffrage campaigners, that Parliament would be persuaded to take serious steps to eradicate the 'domestic tyranny' of spousal abuse.⁸³

The purpose of the 1870 Matrimonial Property Act was to address certain deficiencies in the 1858 Act; deficiencies about which Mill had repeatedly written during the intervening decade. Indeed, he had raised the issue of matrimonial property law as early as 1850 in an article on the new Californian constitution which was published in the *Daily News*. Amongst the many things which the Californians now did better than the English was to recognise the inalienable right of married women to 'their own property'.⁸⁴ In *Subjection*, Mill had already ventured the radical idea that during marriage both spouses might retain a 'separate interest in money matters'. The legally instantiated impoverishment of wives was a 'particular injustice' calculated not just to subjugate, but to diminish the 'dignity of a woman'.⁸⁵ He had also raised the issue in Parliament in May 1867 during an harangue on the subject of the *Admission of Women to the Electoral Franchise*, and again a year later in June 1868, treating his fellow Members to a litany of reported cases in which former husbands had deployed all manner of means, some legal, others not, in order to evade their financial responsibilities and retain control of their spouses' property. 'Like felons', Mill wondered, why was it still the case that married women were 'incapable' in law 'of holding property'.⁸⁶ The injustice

⁸¹ CW vol.21, p.271.

⁸² Essay entitled *Remarks on Mr Fitzroy's Bill for the More Effectual Prevention of Assaults on Women and Children*, printed 'for private distribution' in 1853. It seems that Harriet shared Mill's opinion, or more accurately perhaps that Mill was persuaded by hers. The essay was annotated 'In this I acted chiefly as amanuensis to my wife'. See CW vol.21, pp.102, 105-7.

⁸³ CW vol.19, pp.402-3.

⁸⁴ CW vol.25, pp.1149-50.

⁸⁵ CW vol.21, pp.297-8.

⁸⁶ CW vol.28, p.285.

seemed so obvious to him; as did the injustices evident in relation to both the existence of prostitution and its regulation.

On Prostitution

Mill's engagement with the issue of prostitution was again animated by contemporary events. Concern about the fate of the 'fallen' woman had become a touchstone of respectable mid-Victorian sentiment, finding expression in anxious essays, sensational novels and maudlin verse. Writing in 1850, the renowned critic WR Greg pronounced it to be 'the darkest, the knottiest and the saddest' problem which he and his contemporaries faced.⁸⁷ Troubled gentlemen devised various strategies. Charles Dickens established a refuge. William Ewart Gladstone dedicated his evenings to wandering the streets looking for souls to save. Lord Palmerston however decided to enact some legislation. And so in 1864, concerned at the apparent increase in venereal disease amongst Navy personnel, Palmerston's government passed the first of a series of Contagious Diseases Acts. The Acts empowered the relevant authorities to subject suspected prostitutes in certain ports and barrack-towns to invasive internal examination and, if found to be suffering from venereal disease, to confine them, without their consent, to specific 'lock' hospitals for up to nine months. Interestingly, the 1864 Act generated relatively little comment. Subsequent legislation, which broadened the geographical reach of the provisions, did however. More particularly, the issue became a focal point for a still largely nascent mid-Victorian women's movement. In 1869 Josephine Butler formed the Ladies National Association for the Repeal of the Contagious Diseases Act (LNA).⁸⁸ It quickly attracted considerable support.

For Mill, there was no legislation so 'utterly depriving to the mass of the population', none which better illustrated the 'gross inequality between men and women'.⁸⁹ Mill's personal correspondence during the later 1860s and early 1870s confirms the extent of his dedication to the cause. Writing in support of the repeal campaigner William Malleon in January 1870, he stated:

Of course one need scarcely say that to any man who looks upon political institutions & legislation from the point of view of principle the idea of keeping a large army in idleness & vice & then keeping a large army of prostitutes to pander to their vices is too monstrous to admit of a moment's consideration, while the safety of the country

⁸⁷ In Ian Ward (2014) *Sex, Crime and Literature in Victorian England*, (Oxford: Hart), at p.121. Amongst the most famous of literary 'fallen' women might be counted Charles Dickens's Nancy Sikes in *Oliver Twist* and Dante Gabriel Rossetti's eponymous Jenny.

⁸⁸ Butler's activism was of a distinctly missionary variety, fired by her strong evangelical Christian faith; something which gave her rhetoric a similarly distinctive tone. Notably, as Mill did in regard to the state of marriage, Butler commonly aligned the condition of the prostitute with that of the slave. Her Association unsurprisingly adopted the same tropes, emphasising in particular the moral dimension of 'fallen-ness'. The eighth point in the Association's Manifesto confirmed that the 'conditions of this disease, in the first instance, are moral, not physical'. See Nina Attwood (2011) *The Prostitute's Body*, (London: Pickering and Chatto), pp.75, 84-5, 95-7.

⁸⁹ CW vol.16, p.688.

could be provided for by the military education of all classes, or until after every possible experiment with married soldiers had been tried & failed.⁹⁰

There can be no denying the prudience written into this passage. Mill, as we have already noted, struggled to reconcile himself to the 'passions' of sexuality. In private correspondence with Lord Amberley, regarding the prospective repeal of the Contagious Diseases Acts in February 1870, Mill commented on William Lecky's recently published *History of European Morals from Augustus to Charlemagne*. 'I am', he opined, 'entirely at issue as to prostitution being the least bad form of illicit sexuality', as Lecky had inferred. On the contrary: 'I think it by far the most degrading and most mischievous'.⁹¹

Given his broader reputation as one of the foremost public intellectuals of his day, and his association, however cautious, with the repeal campaign, there was no surprise in Mill being invited to give evidence before the Royal Commission established to investigate the working of the Contagious Diseases Acts. In all there were more than eighty witnesses called before the Commission, including assorted military and police officers, concerned clergymen and reform campaigners, and various other apparently interested parties. The Report which appeared the following year tried to create a coherent narrative from the myriad opinions it had received. It was not easy. The coordinates however were familiar and predictable; the problem lay with 'common' prostitutes and the diseases which they carried, and the state had a responsibility to do something about it and them.⁹² Mill however took a different line, choosing instead to challenge many of the assumptions which underpinned contemporary attitudes to prostitution. The Acts, Mill stated, were 'opposed to one of the greatest principles of legislation, the security of personal liberty'.⁹³ He had no objection to the state assuming responsibility to protect public health, if indeed this was what the Acts were about. He did, however, have a serious problem with the state 'consigning' women 'to hospitals against their will'.⁹⁴ This was, as he later confided to a correspondent, another species of 'tyranny'.⁹⁵

Mill's position met with a mixture of disdain and incredulity. Whilst he certainly shared the contemporary view that prostitution was a social 'evil', the suggestion that the principle responsibility for this evil rested with men was quite contrary to the view preferred by the Royal Commission.⁹⁶ In regard to the 'sin of fornication', the Commissioners concluded in their Report, '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'.⁹⁷ In his evidence to the Commission,

⁹⁰ CW vol.17, p.1688.

⁹¹ CW vol.17. p.1695.

⁹² For a commentary on the Commission's activities and its various struggles, not least in trying to agree a definition of the 'common prostitute', see Attwood, *Body*, pp.47-53, 65-70.

⁹³ CW vol.21, p.351.

⁹⁴ CW vol.21, pp.353, 357.

⁹⁵ The correspondent being John Nichol. CW vol.17, p.1790.

⁹⁶ On the contemporary perception, see Judith Walkowitz (1982) *Prostitution and Victorian Society: Women, Class and the State*, (Cambridge: Cambridge University Press), p.32 and also p.70 arguing that 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'.

⁹⁷ Quoted in Walkowitz, *ibid*, p.71.

Mill countered with the observation that a 'woman cannot communicate the disease but to a person who seeks it, and who knowingly places himself in the way of it', adding the caution that a 'woman can only communicate it through a man; it must be the man who communicates it to innocent women and children afterwards'.⁹⁸ The natural conclusion to this line of thought was hardly calculated to be any more reassuring. If the purpose of legislation was to protect innocent wives and children, then 'the way to do that is to bring motives to bear on the man and not on the woman'. Moreover, if the police were indeed to engage in 'espionage' in order to identify diseased prostitutes, then the 'same degree of espionage' should 'detect the men who go with' them; who should, he added, 'be obliged to give an account why they are here'.⁹⁹

This latter point unsurprisingly caused especial consternation amongst the Commissioners. 'Am I to understand', Sir John Packington Somerset inquired, that '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'.¹⁰⁰ To which the answer was yes. Mill was not in favour of a system of espionage: but if there was to be one, it should apply equally to men as to women. And so, he added, should any consequential penalty. Aside from being 'obliged' to 'account' for themselves, men who have been found to 'have communicated this disease to a modest woman' should be liable to pay 'very severe damages', whilst married women thus infected would have an immediate 'remedy of divorce'. The 'crime' of infecting a wife was 'one of the gravest a man could possibly commit', it being 'so serious as to warrant the dissolving of the marriage tie'.¹⁰¹ Sir John was no less horrified by this response, as was William Nathaniel Massey who felt obliged to request clarity; surely not the 'complete dissolution of the matrimonial tie'? To which the answer was again yes, with the further rider that the decree should be accompanied 'with heavy pecuniary damages'.¹⁰²

Much of what Mill said to the Commission chimed with the position taken by prominent women's organisations such as the LNA. Aside from his incendiary insinuations in regard to the culpability of men, Mill reiterated a commonly articulated concern in regard to innocent, by implication respectable, women getting caught up in police sweeps of suspected prostitutes. He also enjoined a more principled concern regarding the 'tyrannical operation of the force of law' in regard to the compulsory physical examination of suspected prostitutes. The 'security of personal liberty', he observed, was 'justified on principle' and should not casually be legislated away on such a dubious cause.¹⁰³ And it was not just the fact that the physical examination was an infringement of liberty, or that the reach of the legislation was too broad. Developing another argument commonly articulated by the LNA, Mill suggested that the Acts actually served to legitimise prostitution. 'I do not' he observed 'think that

⁹⁸ CW vol.21, p.354.

⁹⁹ CW vol.21, p.354.

¹⁰⁰ CW vol.21, p.362.

¹⁰¹ CW vol.21, pp.354-5.

¹⁰² CW vol.21, p.363.

¹⁰³ CW vol.21, p.351.

prostitution should be classed and recognized as such by the State'. The 'State', he added, 'is in fact going out of its way to provide facilities for the practice of that profession'.¹⁰⁴

At the same time, there was a balance to be struck, between the principle of liberty and the practical needs of equality and justice. There was therefore a place for legal intervention. The working classes and working-class women in particular needed to be looked after, and improved. The Contagious Diseases Acts might be wrong, in both principle and practice, but Mill was quite prepared to contemplate alternative forms of statutory intervention.¹⁰⁵ He was certainly supportive of measures designed to suppress pimping, especially of young girls. He was also inclined to toughen the penalties for sexual intercourse with a young girl, whilst also lowering the age barrier in regard to what the criminal law may treat as under-age.¹⁰⁶ Interestingly, Mill had cited pimping in *On Liberty* as an instance when the state might be entitled to intervene in order to deter someone from seeking 'pecuniary gain' by promoting an 'evil'. Should 'a person be free to pimp?'¹⁰⁷ The state he continued, answering his own question, 'cannot be acting wrongly in endeavouring to exclude the influence of solicitations which are not disinterested'.¹⁰⁸ And whilst, in his evidence before the Commission, Mill admitted that the regulation of brothels was an 'extremely difficult question', he went on to suggest that it was not so much a question of whether they should be regulated, but of how and to what 'degree'.¹⁰⁹ Likewise, whilst disapproving the idea of regulatory 'espionage', he entirely accepted that the police should have a responsibility to control solicitation 'in order to preserve the order of the streets'.¹¹⁰ He even went so far as to recommend some further legislation in order to deter child prostitution, 'raising considerably the age below which it should be prohibited' to have sexual intercourse of any kind.¹¹¹

It is evident that Mill condemned the practice of prostitution. But it is just as evident that he rejected the line taken by those who simply assumed that the solution lay in the persecution of women. There was again a place for state intervention, but it was an intervention that respected the liberty of women, and an equality of regulatory treatment. Both the liberalism, and the optimism, in Mill's approach might be attributed, in part at least, to his faith in the potential impact of marriage reform. Mill believed that the advent of equal marriage, permitting divorce, and the cultivation of good Victorian character, would mean an end to the phenomenon of prostitution. There was, therefore, no apparent need for other or further regulation at that moment in time. It was this optimism which also underpinned his determined activism to improve the suffrage rights of women. If women had equal access to the vote, he assumed, many of the failings of society would diminish as women demanded change.

¹⁰⁴ CW vol.21, pp.354, 358-9.

¹⁰⁵ For a detailed discussion, see Clare McGlynn (2012) 'John Stuart Mill on Prostitution: radical sentiments, liberal proscriptions' *Nineteenth Century Gender Studies*, 8, <http://www.ncgsjournal.com/issue82/mcglynn.htm>

¹⁰⁶ CW vol.21, pp.365, 368.

¹⁰⁷ CW vol.18, p.296.

¹⁰⁸ CW vol.18, p.297.

¹⁰⁹ CW vol.21, pp.360, 369.

¹¹⁰ CW vol.21, p.369.

¹¹¹ CW vol.21, p.365.

On Suffrage Reform

It was towards the end of his life that the suffrage campaign dominated Mill's activities and writing. He was closely involved, along with his daughter Helen, in the establishment of the London branch of the National Society for Women's Suffrage, and he maintained a close interest in its operation up until his death in 1873. In fact, an interest in female suffrage could be detected in early correspondence, as well as some of the early draft papers that Mill composed with Harriet Taylor Mill.¹¹² The broader debate regarding franchise reform during the 1860s provided a further stimulus. Mill was of course a supporter of further reform. But it was not unalloyed support. As he made clear in his 1866 essay *Representative Government*, Gladstone's proposals for franchise reform were commendable precisely because they were 'not democratic'.¹¹³ Mill may not have gone quite so far as his friend Thomas Carlyle, who bemoaned the second Reform Act as 'the end of our poor old England', or indeed Walter Bagehot who said much the same in his acerbic Preface to the second edition of *The English Constitution* which appeared in 1872.¹¹⁴ But he shared a similar concern in regard to the prospective 'despotism' by the 'People'.¹¹⁵ Would the 'river' of democracy 'fertilize or lay waste' to the 'field' he wondered?¹¹⁶ Mill's idea of democracy was distinctly Periclean and paternal. The vote was less a 'right' than a 'trust', and whilst Mill never argued against the ideal of universal suffrage; his enthusiasm was judiciously tempered by the pragmatics of circumstance. Most of his countrymen, and countrywomen, could not as yet be trusted with the vote. In correspondence with Lord Grey, he suggested that in the case of the working-classes the 'right' to vote should be conditional on first passing an educational test.¹¹⁷ In the meantime he sought to reassure Edwin Chadwick in 1859 that any women 'enfranchised would be almost solely those of the higher and middle ranks'.¹¹⁸

Unsurprisingly, the question of women's suffrage assumed a significant presence in *Subjection*. Here again, Mill acknowledged that not everyone should have the 'right of suffrage'. There would always be 'needful securities and limitations'.¹¹⁹ But there was no inherent reason why any of these limitations should apply only to women. Mill took aim at the cultural prejudices which underpinned the doctrine of 'separate spheres', the 'silly depreciation' of the place of women in public life, made worse by 'silly panegyrics' such as Coventry Patmore's iconic poem the 'Angel in the House'.¹²⁰ It was, he maintained, an 'obscure' idea, almost too 'ashamed to express itself openly'.¹²¹ Mill repeatedly averted to

¹¹² Perhaps most obviously the prefatory comments to his 1851 essay on the *Enfranchisement of Women*. See CW vol.14, pp.102-3, and vol.21, pp.385-6, 388-91.

¹¹³ CW vol.28, p.65.

¹¹⁴ In Reeves, *Mill*, p.5.

¹¹⁵ Reeves, *ibid*, pp.57-8.

¹¹⁶ CW vol.18, p.158.

¹¹⁷ CW vol.15, p.941.

¹¹⁸ CW vol.15, p.580.

¹¹⁹ CW vol.21, p.301.

¹²⁰ In *Subjection*, CW vol.21, p.321. Patmore's poem assumed a far greater cultural than immediately poetic significance in later Victorian England. Ironically the 'Angel' in the poem was not any particular woman but love itself. For a commentary on Mill's critique of the 'separate spheres', shared unsurprisingly by Harriet, see Susan Kingsley Kent (1987) *Sex and Suffrage in Britain 1860-1914* (London: Routledge), pp.187-92.

¹²¹ See Kent, *ibid*, 55-6, quoting Frederic Harrison's supposition, as late as 1909, that female suffrage would 'disintegrate families' and 'plant anarchy in the house'.

the doctrine of 'separate spheres' in Parliamentary debate, noting in July 1866 the incongruity of excluding women 'from the franchise by reason of their sex' whilst at the same time celebrating the reign of Queen Victoria.¹²² The following year he returned to the theme, questioning 'whether there is any adequate justification for continuing to exclude an entire half of the community' from 'the capability of ever being admitted within the pale of the Constitution'.¹²³ Principal amongst the pretended justifications which Mill dismissed was that which presumed a 'line of separation between women's occupations and men's'. Such a prejudice belonged to a 'gone-by state of society' now 'receding further into the past'.¹²⁴ No such line, he noted, seemed to apply in the matter of paying taxes. This was certainly something which the state deemed women to be 'capable' of doing.¹²⁵

But it was not, of course, simply a matter of principle. As he observed in *Subjection*, to 'have a voice in choosing those by whom one is to be governed is a means of self-protection due to everyone'.¹²⁶ The vote is a 'guarantee of just and equal consideration'.¹²⁷ In simple terms, it will make male legislators answerable to female constituents. When in 1867 Florence Nightingale wrote asking if there were 'not evils which press more hardly on women than not having a vote', she received an unambiguous reply: no.¹²⁸ In his 1869 address to the London Society, Mill concluded: 'Let us but gain the suffrage, and whatever is desirable for women must ultimately follow, without its being necessary at present to decide, or indeed possible to foresee, all that is desirable'. He suggested that the mere 'claim' to suffrage had already resulted in the presentation of new legislation regarding married women's property.¹²⁹ In his 1870 address to the same body, he reiterated the argument. If women had been enfranchised, he supposed, Parliament would already have done something more about spousal abuse, and equally something rather less about contagious diseases.¹³⁰ A century and a half of disappointment has led subsequent critics to recast this confidence as complacency.¹³¹ A right to vote has not prevented women being abused by their partners any more than it has ensured equality in the workplace, or eradicated prostitution.

Society has still progressed. But it has not progressed as far as Mill would have hoped, for which reason, ever the pragmatist, he would have thought still more intensely about the relation of ends and means. The cause, as he repeatedly reminded his London Society audiences, was above all 'practical'; a question of raising funds, presenting petitions, publishing pamphlets, persuading the people that mattered, pressing the case for practical legal and educational reform. Mill's first thought was always strategic. When he was not cajoling suffrage societies, he was berating fellow Parliamentarians, making speeches,

¹²² CW vol.28, pp.91-3.

¹²³ CW vol.28, p.157.

¹²⁴ CW vol.28, pp.151, 155. The extent to which passages in Mill's address resonate with those found in the earlier 1851 essay on the *Enfranchisement of Women*, much of which he attributed to the influence of Harriet Taylor, is striking.

¹²⁵ CW vol.16, pp.1163-4.

¹²⁶ CW vol.21, p.301.

¹²⁷ CW vol.21, p.301.

¹²⁸ CW vol.16, pp.1344-6.

¹²⁹ CW vol.19, p.379.

¹³⁰ CW vol.19, pp.388-9.

¹³¹ See Mann and Spinner-Halev, 'Feminism', p.257.

presenting petitions and venturing amendments. He famously sought to have the word 'man' replaced with that of 'person' in Disraeli's Reform bill. It was not that Mill hoped to sneak something through without anyone noticing; quite the reverse. In his *Autobiography*, he would later describe the gesture as 'perhaps the only really important public service I performed in the capacity as a Member of Parliament'.¹³²

The presentation of petitions gestured to the same purpose. Mill was always 'happy' to present a suffrage petition if the 'ladies in the locality' of wherever could conjure up enough signatures.¹³³ In June 1866 he presented the first suffrage petition to Parliament. It had 1499 signatures. A year later he applauded the Manchester Suffrage Society for presenting a petition with 13,500.¹³⁴ The following year he was triumphantly informing correspondents that the London Society had secured 'nearly 14000 signatures, many of them names of great weight', for a petition he intended to present. And 'many more are expected'.¹³⁵ Mill presented it in early June 1868, the day after he had presented a petition from the Belfast Society 'in favour of the Bill for Amending the Law respecting the Property of Married Women'.¹³⁶ The following month Mill reckoned that the total number of signatures collected in the various petitions that year exceeded 50,000. The 'cause' was 'prospering beyond all hope'.¹³⁷ Pages and pages of correspondence from 1869 and 1870 were given over to urging the collection of more and more signatures for more and more petitions. When it was noted that there were no 'correspondents' in Stoke-on-Trent, potentially therefore a vast untapped reserve of prospective signers, Mill wanted to know why. More importantly he wanted something to be done about it.¹³⁸ No stone was to be left unturned. When it came to his attention, a little later, that the Cobden Working Men's Club, Bermondsey, did it not permit women to join on 'equal terms', he again wanted to know why.¹³⁹ The name might be exclusive, but the cause was common.

Another strategy which Mill energetically supported was the promotion of women elsewhere in public life. Time and again in his correspondence Mill can be found celebrating the election of women to School Boards, or their appointment as librarians or secretaries of academic or professional associations.¹⁴⁰ He had once again alluded to the issue, if at a tangent, in *Subjection*, not least in a long passage in chapter three in which he reminded his readers of all the famous women who had ruled countries and won battles, from Elizabeth I to the biblical Deborah to Joan of Arc.¹⁴¹ History suggests that women might actually be better

¹³² CW vol.1, p.285. The amendment was unsurprisingly lost. But 73 fellow Parliamentarians voted in support. The situation was confused by the recent enactment in 1850 of Lord Romilly's Act which stated that any piece of legislation which referred to 'man' should be taken as being generic and inclusive in regard to women, unless explicitly stated otherwise. In the end the matter was decided in the courts, which held that the terms Romilly's Act did not apply to the 1867 Reform Act. For an account see Kent, *Suffrage*, pp.187-8.

¹³³ CW vol.16, p.164.

¹³⁴ CW vol.16, pp.1284, 1336.

¹³⁵ CW vol.16, p.1382.

¹³⁶ CW vol.16, p.1413.

¹³⁷ CW vol.16, p.1427.

¹³⁸ CW vol.17, p.1575.

¹³⁹ CW vol.17, pp.1773-4.

¹⁴⁰ CW vol.15, pp.638, 17:1799.

¹⁴¹ CW vol.21, pp.302-3. In correspondence of the time, Mill can be found musing on the presentation of various female figures in recent published histories. He took issue with John Nichol on their alternative readings

suited to government than men; more measured, less inclined to run 'wild after an abstraction', possessed of a useful female intuition, better equipped, to use a more modern term, to multi-task. There is an almost Thatcherite tone in his suggestion that the 'superintendence of a household' is an effective training for government; as there is in the ensuing suggestion that so many middle-class women had already proved themselves by running local charities.¹⁴² In his 1869 address to the London Society, he reiterated the apparently unarguable fact that everyone knows that the 'fittest person to manage a workhouse is the person who best knows how to manage a house', just as 'every experienced traveller knows that there are few comfortable inns where there is no hostess'.¹⁴³

Not that Mill had an unalloyed admiration of the female temperament, or indeed women in general. He was notably acerbic in regard to a species of 'literary' women which scattered its audience with a familiar array of tired romantic prejudices and 'artificial products'.¹⁴⁴ There were exceptions. Mill was an avowed admirer of Madame de Stael, as he was George Sand.¹⁴⁵ But there were not many.¹⁴⁶ And he was just as exercised by the accepting woman as he was the 'literary' or the 'pushing'. Periodically, as in 1848, he articulated a broader disappointment at the apparent lack of revolutionary 'spirit' amongst his compatriots, male and female. But he was especially concerned by the number of women who seemed to just accept their fate.¹⁴⁷ He expected little of the working-class.¹⁴⁸ But he expected a lot more of the 'intelligent' class of women.¹⁴⁹ 'The most important thing we now have to do', he observed to Alexander Bain in summer 1869, 'is to stir up the zeal of women themselves'.¹⁵⁰ He ventured alternative explanations. The 'ascendency' of clerical opinions 'over the minds of many women' was one.¹⁵¹ Another was the 'habits of submission' into which women are educated.¹⁵² Either way, progress in regard not just to the emancipation of women but in the broader 'condition' of England, depended on getting women to think rather more intelligently about their lot.

of Froude's passages on Elizabeth in his vast 12 volume *History of England from the Fall of Wolsey to the death of Elizabeth*, which trundled off the presses intermittently between 1856 and 1870. Nichol thought Froude's Elizabeth scheming and rather unappealing. Mill thought otherwise. The ability to scheme was commendable in a monarch. See CW vol.17, pp.1633-4.

¹⁴² CW vol.21, pp.306-7, 318, 330.

¹⁴³ CW vol.19, p.377.

¹⁴⁴ CW vol.21, pp.279-80, 314-15.

¹⁴⁵ In a letter to Sand, written sometime in early 1848, he bemoaned the comparative 'timidity' of 'English literary women'. CW vol.25, pp.1260-1.

¹⁴⁶ It might be noted that Mill was not particularly impressed by that many male novelists either. He reserved a particular animus for 'that creature Dickens'. Mill was incensed by his 'vulgar impudence' in ridiculing the 'rights of women' in *Bleak House*. See CW vol.14, p.190.

¹⁴⁷ And not merely in regard to their lack of the vote. See here Brink, *Principles*, pp.268-9.

¹⁴⁸ See his observations to Charles Kingsley in private correspondence, CW vol.17, p.1743. It 'would take many generations', he observed, to 'touch' those 'who have little or no social intercourse, and who cannot buy or borrow books'. This did not mean that they should be abandoned, he added hastily. But the immediate impulse must come from elsewhere, from the 'highminded'.

¹⁴⁹ CW vol.16, p.1521.

¹⁵⁰ CW vol.17, p.1623.

¹⁵¹ CW vol.19, pp.389-90.

¹⁵² In his essay on the *Enfranchisement of Women*, in Rossi, *Essays*, pp.117-18.

The case for female education was also pivotal in Mill's perception. In broader terms, education was the dynamic for progress, political, social and moral.¹⁵³ He was a vigorous campaigner for the admission of women into University and various institutes of professional training; something that aligned the cause of better education with the strategic imperative of placing women in the public sphere.¹⁵⁴ In his 1867 Commons speech on the *Admission of Women to the Electoral Franchise* he made specific reference to the case of Elizabeth Garrett who had dodged the various obstacles placed in her way and snuck in through the 'doors' of the Society of Apothecaries.¹⁵⁵ Ensuring the place of women in proposals for universal primary education was a larger aspiration. Here again the egalitarian Mill recommended the constructive responsibility of the state.¹⁵⁶ Ensuring universal, and compulsory, education was precisely the kind of thing that a modern state should do. The cause of educational reform was at the centre of his 1869 and 1870 addresses to the London Society. The right to vote was never natural. It was civil and qualified and earned, for women as for men. In the 1870 address, he 'freely' confessed that until the 'political education of women' was 'greatly improved', the case for female suffrage could not be 'affirmed with any confidence'.¹⁵⁷

Mr Mill's Influence

We are likely to be frustrated if we try to ascertain a coherent Millian position on women and the law. It is not just that there are so many different Mills, libertarian, egalitarian, ethical, feminist, radical, conflicted, downright perplexing. There is inconsistency too. Mill's thinking evolved. Sometimes Mill seems a more liberal feminist, even perhaps a conservative one. At other times, he assumes a position that might indeed be termed radical. The Mill who put so much stock in securing the vote for women, seems to be rather more liberal than the Mill who blamed men for the plight of prostituted women before the Royal Commissioners in 1870. And the context shifted too. As a responsive campaigner, Mill was stimulated by contemporary debate; which is why he had so much to say about marriage, domestic violence and the vote, and so little it seems about other issues which have since assumed such a prominent place in gender debates. It might have been expected, for example, that he would have been drawn into debates surrounding the passage of Lord Campbell's 1857 Obscene Publications Act; for which reason it might have been possible to place Mill within more modern debates regarding pornography regulation. But if Mill's attention was captured by the 1857 Act, no record remains. The reason is probably quite simple. The Act was not controversial, and was not perceived as touching upon the larger 'question' of women. We are accordingly left to surmise.

¹⁵³ Mann and Spinner-Halev, 'Feminism', pp.248-50, and Cohen-Almagor, 'Autonomy', pp.561-2, 565-6.

¹⁵⁴ See CW vol.15, pp.787, vol.17, p.1668, and also vol.32, p.232 commending the recent decisions of Sydney and Chicago University to admit women, in the latter case 'even' including the Law School. Mill's last Will and Testament included provision for sums of money to be held in trust for the furtherance of women in higher education. A sum of £3000 to be paid the first University 'to throw open all degrees to female students' and a further £3000 to the same University 'to endow therewith two scholarships to be held by female students exclusively'. See CW vol.31, p.333.

¹⁵⁵ CW vol.28, pp.159-60.

¹⁵⁶ Reeves, *Mill*, p.288.

¹⁵⁷ CW vol.19, p.387. The same view was repeatedly articulated in correspondence, most extensively perhaps with Florence May, prominent suffragette and still more prominent pianist, pupil of Brahms and Clara Schumann. See CW vol.16, pp.1378-9.

The 1857 Act was not the only piece of contemporary legislation that failed to capture Mill's attention. Throughout the second part of the nineteenth century, Parliament was repeatedly presented with bills intended to permit widowers to marry their deceased wives' sisters. Mill however appears to have barely noticed. When asked for his opinion on the subject, by a prospective Westminster constituent in 1865, he replied that he had not given it much thought, but on balance could see no reason to oppose the legislation.¹⁵⁸ Conversely, whilst they did not consume his attention in the same way as the larger questions of matrimonial law reform, female suffrage, and even repeal of the Contagious Diseases Acts, Mill's attention could be caught by more transient matters of public interest, especially those 'scares' which would periodically possess the more impressionable sections of mid-Victorian society. As early as 1846 he was writing to the *Morning Chronicle* on the subject of child-murder. If mothers were indeed murdering their children, and in the kind of numbers which some more excitable coroners supposed, it was a consequence not of intrinsic evil, but brutal social circumstance and the legally instantiated hypocrisy which refused to cast any aspersion on their 'seducers'.¹⁵⁹ In a similar vein, he felt moved to alert readers of the *Daily News* in 1858 to the parlous state of English Lunacy law, and the potential it offered to mendacious husbands who wanted rid of unwanted wives; a 'fate' he concluded that was 'more cruel and hopeless than the most rigorous imprisonment'.¹⁶⁰

In the final analysis, however, Mill's critical reputation as a feminist rests squarely on his more concentrated writings and speeches on the questions of matrimonial law, domestic abuse, prostitution and the vote. He was certainly appreciated on these terms by contemporaries. Shortly after his death, Millicent Garrett Fawcett would declare:

There can be no doubt that Mr Mill's influence marks an epoch in the women's movement. He was a master and formed a school of thought. Just as in art, a master forms a school and influences his successors for generations, so the present leaders and champions of the women's movement have been influenced and to a great extent formed by Mr Mill.¹⁶¹

James Fitzjames Stephen may have been appalled by what he encountered in the pages of Mill's *Subjection*, but suffragettes such as Kate Amberley cherished it, not least because it helped to get 'all the arguments into my head and have them ready for any scoffers'; such as Fitzjames Stephen.¹⁶² Mill had his detractors no doubt. Josephine Butler never forgave his reluctance to properly join her crusade against the Contagious Diseases Acts. And the detractors remain, as we have already noted. The recommendation of 'ideal' marriages continues to grate with some. Mill's views on sexuality seem odd, as do his assorted recommendations that financial checks be run on prospective parents, that there should be limits to the number of children in any one family, and that the most effective solution to the problem of spousal abuse might be corporal punishment. And there is the residual naivety. He

¹⁵⁸ See CW vol.28, pp.26-7, and also Reeves, *Mill*, p.365.

¹⁵⁹ CW vol.24, pp.916-19.

¹⁶⁰ CW vol.25, pp.1198-9

¹⁶¹ In Caine, *Feminists*, p.33.

¹⁶² In Caine, *ibid*, p.34.

expected too much of educational provision, just as he assumed too much of the suffrage. But it was the same optimism which energised.¹⁶³ On presenting yet another suffrage petition to Parliament, he exulted to Sir Charles Dilke: 'Is there not something marvellous in so great a progress?'¹⁶⁴ Society was perfectible. It was just a matter of making an effort. 'We live', another correspondent was reminded, 'in times when broad principles of justice, perseveringly proclaimed, end by carrying the world with them'.¹⁶⁵

History has confounded the optimism. As long ago as 1977, Julia Annas observed that: 'It will be a good day when *The Subjection of Women* is outdated, but it is not yet'.¹⁶⁶ Four decades on there is no reason to dissent from the sentiment. Much indeed remains to be done. But, this is not to disparage the place of Mill or his *Subjection* in the continuing struggle to improve the 'condition' of women in modern society; quite the converse. The core argument, that the law should recognise a fundamental equality between men and women, is unarguable. It was in 1869. It is today. And there is something else too. Perhaps the greatest insight written into *Subjection*, and one of those most commonly overlooked, is the fact that it is not just about women.¹⁶⁷ Mill the pragmatist might have been more immediately concerned with 'the unspeakable gain in private happiness to the liberated half of the species' that further reform of marriage law and the granting of the vote would realise.¹⁶⁸ But Mill the utilitarian speculator was possessed of a rather larger ambition; to improve society as a whole. The aspiration was vividly drawn in his 1851 essay on *The Enfranchisement of Women*. The jurisprudentially enforced subjugation of women 'is corrupting equally to both; in the one it produces the vices of power, in the other those of artifice'.¹⁶⁹ Towards the end of *Subjection* he declared that:

The moral regeneration of mankind will only really commence, when the most fundamental of the social relations is placed under the rule of equal justice, and when human beings learn to cultivate their strongest sympathy with an equal in rights and in cultivation.¹⁷⁰

And, as he concluded in the very final sentences of the same, despite all the undoubted benefits that would flow from the collateral improvement of cultural and social expectations, the reform of education and manners, what really mattered was reform of the law relating to women. Their subjection was reinforced 'by actual law', and it could only be relieved when that law was reformed.¹⁷¹ For Mill, the law was both an instrument of women's subjection and a prospective means of liberation.

¹⁶³ Mann and Spinner-Halev, 'Feminism', p.268.

¹⁶⁴ CW vol.17, p.1731.

¹⁶⁵ CW vol.17, p.1618.

¹⁶⁶ Annas, 'Mill', p.53. The sentiment is shared by Maria Szapuova, in 'Feminism', at p.186.

¹⁶⁷ Though noted more recently by the likes of Shanley, 'Friendship', pp.122-3, Morales, 'Power', pp.102-3, 106-9, and Mann and Spinner-Halev, 'Feminism', p.254

¹⁶⁸ CW vol.21, p.336.

¹⁶⁹ Rossi, *Essays*, p.114.

¹⁷⁰ CW vol.21, p.336.

¹⁷¹ CW vol.21, p.340.